

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	
)	CR-18-00258-EJD
PLAINTIFF,)	
)	SAN JOSE, CALIFORNIA
VS.)	
)	MARCH 11, 2022
RAMESH SUNNY BALWANI,)	
)	VOLUME 3
DEFENDANT.)	
_____)	PAGES 498 - 634

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF:	UNITED STATES ATTORNEY'S OFFICE
	BY: JOHN C. BOSTIC
	JEFFREY B. SCHENK
	150 ALMADEN BOULEVARD, SUITE 900
	SAN JOSE, CALIFORNIA 95113
	BY: ROBERT S. LEACH
	KELLY VOLKAR
	1301 CLAY STREET, SUITE 340S
	OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

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CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: SHAWN ESTRADA
SACHI SCHURICHT
THE ORRICK BUILDING
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BY: JEFFREY COOPERSMITH
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

BY: AMY WALSH
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ALSO PRESENT:

OFFICE OF THE U.S. ATTORNEY
BY: MADDI WACHS, PARALEGAL
SARA SLATTERY, PARALEGAL

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOW

FEDERAL BUREAU OF INVESTIGATION
BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAVDIS

JURY CONSULTANT
BY: DAVID PERROTT

1 SAN JOSE, CALIFORNIA

MARCH 11, 2022

2 P R O C E E D I N G S

09:12AM 3 (COURT CONVENED AT 9:18 A.M.)

09:18AM 4 (PROSPECTIVE JURY PANEL OUT AT 9:18 A.M.)

09:19AM 5 THE COURT: GOOD MORNING EVERYONE. I APOLOGIZE FOR
09:19AM 6 THE BRIEF DELAY. LET'S GO ON THE RECORD IN 18-258,
09:19AM 7 UNITED STATES VERSUS RAMESH "SUNNY" BALWANI.

09:19AM 8 FOR THE GOVERNMENT WHO APPEARS?

09:19AM 9 MS. VOLKAR: GOOD MORNING, YOUR HONOR. KELLY VOLKAR
09:19AM 10 ON BEHALF OF THE GOVERNMENT.

09:19AM 11 I'M JOINED BY JEFF SCHENK, JOHN BOSTIC, ROBERT LEACH, AND
09:19AM 12 OUR CASE AGENT, CHRISTOPHER MCCOLLOWS, AND OUR PARALEGAL,
09:19AM 13 MADDI WACHS.

09:19AM 14 THE COURT: THANK YOU. GOOD MORNING, EVERYONE.
09:19AM 15 FOR THE DEFENDANTS.

09:19AM 16 MR. COOPERSMITH: GOOD MORNING.

09:19AM 17 JEFF COOPERSMITH FOR MR. BALWANI, WHO IS PRESENT, AND MY
09:19AM 18 COLLEAGUES ARE PRESENT, AMY WALSH, STEPHEN CAZARES,
09:19AM 19 SHAWN ESTRADA --

09:19AM 20 MR. RAFAT: THE SOUND SYSTEM IS NOT ON.

09:19AM 21 THE COURT: JUST A SECOND, SIR. THANK YOU. I'M
09:19AM 22 SORRY.

09:19AM 23 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:19AM 24 JEFF COOPERSMITH FOR MR. BALWANI. HE'S PRESENT.

09:19AM 25 I'M JOINED BY MY COLLEAGUES AMY WALSH, SACHI SCHURICHT,

09:20AM 1 SHAWN ESTRADA, AARON BRECHER, AND AMANDA MCDOWELL.

09:20AM 2 DAVID PERROTT, OUR JURY CONSULTANT, IS ALSO PRESENT.

09:20AM 3 THE COURT: THANK YOU. GOOD MORNING.

09:20AM 4 THIS IS THE DATE AND TIME SET TO HEAR A MOTION FILED BY
09:20AM 5 THE DEFENSE, IT'S DOCUMENT 1327, AND I HAVE READ THAT.

09:20AM 6 I'VE READ 1337, WHICH IS THE GOVERNMENT'S OPPOSITION, AND
09:20AM 7 THEN THE DEFENSE REPLY --

09:20AM 8 MR. RAFAT: YOUR HONOR, I APOLOGIZE FOR
09:20AM 9 INTERRUPTING. THE SOUND SYSTEM IS OFF, AND THAT MEANS THE
09:20AM 10 COURTHOUSE IS NOT PROVIDING ACCESS.

09:20AM 11 THE COURT: SIR, COULD YOU, FIRST OF ALL, STATE YOUR
09:20AM 12 NAME.

09:20AM 13 MR. RAFAT: THE SOUND SYSTEM IS NOT ON. THE COURT
09:20AM 14 IS DENYING --

09:20AM 15 THE COURT: WOULD YOU PLEASE STATE YOUR NAME?

09:21AM 16 MR. RAFAT: THE SOUND --

09:21AM 17 THE COURT: EXCUSE ME. COULD YOU CALL THE CSO UP
09:21AM 18 HERE AND MAYBE THEY CAN HELP THIS GENTLEMAN? I'M NOT ABLE TO
09:21AM 19 COMMUNICATE WITH HIM.

09:22AM 20 (PAUSE IN PROCEEDINGS.)

09:22AM 21 THE COURT: GOOD MORNING. I SEE A -- PARDON ME,
09:22AM 22 LADIES AND GENTLEMEN. I SEE ONE OF OUR COURT SECURITY OFFICER
09:23AM 23 IS PRESENT.

09:23AM 24 SIR, THERE WAS A GENTLEMAN HERE WHO WAS EXPRESSING SOME
09:23AM 25 CONCERN, AND I WANTED HIM TO SPEAK WITH YOU ABOUT HIS ISSUE,

09:23AM 1 AND THEN HAVE YOU LET ME KNOW WHAT HIS ISSUE WAS SO WE COULD
09:23AM 2 CORRECT IT.

09:23AM 3 COURT SECURITY OFFICER: OKAY, YOUR HONOR.

09:23AM 4 THE COURT: I BELIEVE HE'S LEFT THE COURTROOM NOW
09:23AM 5 UNFORTUNATELY. I CAN DESCRIBE HIM FOR YOU. HE'S A GENTLEMAN,
09:23AM 6 AND I THINK HE'S WEARING A T-SHIRT TODAY.

09:23AM 7 AND IF YOU SEE HIM, YES, IF YOU SEE HIM, COULD YOU MAYBE
09:23AM 8 INQUIRE AS TO WHAT IT IS THAT HE NEEDS US TO DO TO ASSIST HIM?
09:23AM 9 I WASN'T ABLE TO UNDERSTAND HIM.

09:23AM 10 COURT SECURITY OFFICER: YES. FINE. 6-FOOT
09:23AM 11 T-SHIRT?

09:23AM 12 THE COURT: YES.

09:23AM 13 COURT SECURITY OFFICER: I DO RECOGNIZE HIM.

09:23AM 14 THE COURT: THANK YOU VERY MUCH. AND MAKE SURE YOU
09:23AM 15 LET HIM KNOW THAT I'M HERE TO HELP HIM AND I WANT HIM TO
09:23AM 16 UNDERSTAND WHAT HIS ISSUE IS, BUT HE'S LEFT THE COURTROOM NOW.
09:23AM 17 GREAT. THANK YOU.

09:23AM 18 COURT SECURITY OFFICER: THANK YOU, YOUR HONOR.

09:24AM 19 THE COURT: ALL RIGHT. THANK YOU.

09:24AM 20 COUNSEL, YOU CAN TAKE YOUR MASKS OFF IF YOU WOULD LIKE.

09:24AM 21 MS. VOLKAR: THANK YOU, YOUR HONOR.

09:24AM 22 MR. BRECHER: THANK YOU, YOUR HONOR. I WAS JUST
09:24AM 23 ABOUT TO ASK.

09:24AM 24 GOOD MORNING, YOUR HONOR. AARON BRECHER FOR MR. BALWANI.

09:24AM 25 MR. COOPERSMITH: YOUR HONOR, I'M SORRY, COULD I

09:24AM 1 HAVE A QUICK CONVERSATION WITH MS. ROBINSON? THERE'S A
09:24AM 2 POTENTIAL ISSUE.

09:24AM 3 THE COURT: WITH WHO?

09:24AM 4 MR. COOPERSMITH: WITH MS. ROBINSON.

09:24AM 5 (DISCUSSION OFF THE RECORD.)

09:24AM 6 MR. COOPERSMITH: OKAY. I'M SORRY, YOUR HONOR.

09:24AM 7 THE COURT: THAT'S QUITE ALL RIGHT. YOU SHOULD PULL
09:24AM 8 THAT MICROPHONE OVER.

09:24AM 9 MR. BRECHER: YES, OF COURSE.

09:24AM 10 IS THAT BETTER, YOUR HONOR?

09:24AM 11 THE COURT: YES. THANK YOU.

09:24AM 12 MR. BRECHER: I EXPECT THE COURT IS QUITE FAMILIAR
09:24AM 13 WITH THE SUBSTANCE OF THE EVIDENCE THAT WAS ADMITTED IN THE
09:24AM 14 HOLMES TRIAL ABOUT THE ALTERATION OF THESE REPORTS ABOUT
09:24AM 15 THERANOS'S PARTNERSHIPS WITH VARIOUS PHARMACEUTICAL COMPANIES,
09:24AM 16 INCLUDING IN PARTICULAR THE ADDITION OF SOME OF THOSE
09:25AM 17 COMPANIES' LOGOS.

09:25AM 18 SO UNLESS YOUR HONOR HAS QUESTIONS ABOUT THAT, I THINK
09:25AM 19 I'LL DIVE RIGHT INTO THE ARGUMENT IF THE COURT DOESN'T MIND.

09:25AM 20 THE COURT: NO, PLEASE.

09:25AM 21 MR. BRECHER: AS THE COURT MAY HAVE SEEN FROM OUR
09:25AM 22 PAPERS, THE HOLMES JURY FOUND THIS EVIDENCE HIGHLY SIGNIFICANT
09:25AM 23 AS TO THE QUESTION OF INTENT IN REACHING ITS DECISION.

09:25AM 24 BUT THE GOVERNMENT CANNOT BRING THAT EVIDENCE INTO THIS
09:25AM 25 TRIAL, AND THAT'S BECAUSE DOING SO WOULD RISK CONFUSING THE

09:25AM 1 JURY BY PAINTING A MISLEADING PICTURE OF MR. BALWANI'S ROLE,
09:25AM 2 AND IT WOULD ALSO FAIL TO SATISFY THE STANDARDS REQUIRED FOR A
09:25AM 3 VICARIOUS LIABILITY THEORY.

09:25AM 4 NOW, THE GOVERNMENT HAS TWO THEORIES THAT ITS OPPOSITION
09:25AM 5 BRIEF HAS PROFFERED. THE FIRST IS THAT THERE IS SUFFICIENT
09:25AM 6 CIRCUMSTANTIAL EVIDENCE TO SUGGEST THAT MR. BALWANI HAD DIRECT
09:25AM 7 PERSONAL KNOWLEDGE OF THESE CHANGES AND THAT THEY WERE
09:25AM 8 UNAUTHORIZED.

09:25AM 9 AND THE SECOND THEORY IS THAT THE EVIDENCE IS ADMISSIBLE
09:25AM 10 UNDER A VICARIOUS LIABILITY THEORY AS THE ACTS OF A -- EXCUSE
09:25AM 11 ME, OF A COSCHEMER OR COCONSPIRATOR.

09:26AM 12 BUT I THINK THE GOVERNMENT IS MISTAKEN ON BOTH OF THOSE
09:26AM 13 THEORIES, AND I'D LIKE TO START WITH THE FIRST.

09:26AM 14 AS YOUR HONOR KNOWS, THE NINTH CIRCUIT IN THE PHILLIPS
09:26AM 15 DECISION, WHICH I KNOW HAS BEEN CITED EXTENSIVELY THROUGHOUT
09:26AM 16 THESE PROCEEDINGS, SAID YOU CANNOT IMPUTE KNOWLEDGE OR INTENT
09:26AM 17 TO A COSCHEMER OR A COCONSPIRATOR. THAT HAS TO BE SHOWN
09:26AM 18 PERSONALLY.

09:26AM 19 AND IT IS ERROR TO ADMIT EVIDENCE OF PURPORTEDLY FALSIFIED
09:26AM 20 EVIDENCE WITHOUT SOME SHOWING THAT THE DEFENDANT KNEW, HAD
09:26AM 21 ACTUAL KNOWLEDGE, NOT IMPUTED KNOWLEDGE, ABOUT THAT FALSITY.

09:26AM 22 I DON'T SEE HOW THE GOVERNMENT CAN GET TO WHERE THEY CLAIM
09:26AM 23 THEY WANT TO BE ON THAT THEORY, AND THAT'S WHERE I'M STARTING.

09:26AM 24 YOUR HONOR, THERE IS NOT ONE IOTA OF EVIDENCE THAT
09:26AM 25 MR. BALWANI KNEW OF AN UNAUTHORIZED CHANGE TO ANY OF THESE

09:26AM 1 REPORTS.

09:26AM 2 MR. BALWANI HAD ALMOST NO CONTACT WITH THESE
09:26AM 3 PHARMACEUTICAL COMPANIES. THOSE RELATIONSHIPS WERE MANAGED BY
09:27AM 4 MS. HOLMES.

09:27AM 5 INDEED, AS THE GOVERNMENT HAS POINTED OUT IN ITS BRIEFING
09:27AM 6 AND AS THEY INTRODUCED AT THE HOLMES TRIAL, MANY OF THESE
09:27AM 7 RELATIONSHIPS, THE PARTNERSHIPS THAT LED TO THESE REPORTS HAD
09:27AM 8 EITHER REACHED THEIR CONCLUSION OR WERE ON THEIR WAY TO THEIR
09:27AM 9 CONCLUSION BY THE TIME MR. BALWANI EVEN JOINED THE COMPANY.

09:27AM 10 MR. BALWANI ALSO RECEIVED, BEFORE HE JOINED THERANOS IN
09:27AM 11 SEPTEMBER 2009, A COMMUNICATION IN AUGUST 2009 TELLING HIM THAT
09:27AM 12 THERANOS'S TECHNOLOGY HAD BEEN, QUOTE, ROBUSTLY VALIDATED BY
09:27AM 13 ITS PHARMACEUTICAL PARTNERS AND IDENTIFYING THESE VERY SAME
09:27AM 14 COMPANIES.

09:27AM 15 IN OTHER WORDS, YOUR HONOR, MR. BALWANI GOT THE SAME
09:27AM 16 REPRESENTATION THAT THE INVESTORS LATER GOT ABOUT
09:27AM 17 PHARMACEUTICAL COMPANIES COMPREHENSIVELY VALIDATING THERANOS'S
09:27AM 18 TECHNOLOGY.

09:27AM 19 WE KNOW THAT THERE'S NO EVIDENCE THAT MR. BALWANI EVER SAW
09:27AM 20 WHAT I'LL CALL THE ORIGINAL OR UNALTERED VERSIONS OF THE GSK,
09:27AM 21 THE GLAXOSMITHKLINE REPORT, OR OF THE PFIZER REPORT.

09:27AM 22 AS FOR THE SCHERING-PLOUGH REPORT, THE GOVERNMENT SEEMS TO
09:28AM 23 HANG ITS HAT ON A SINGLE EMAIL, MARCH 19TH, 2010, IN WHICH
09:28AM 24 MR. BALWANI IS COPIED AND HE'S -- AND THAT ATTACHMENT IS THE
09:28AM 25 UNALTERED VERSION OF THE SCHERING-PLOUGH REPORT.

09:28AM 1 AND THEN A MONTH LATER, ON APRIL 14TH, 2010, THERE'S AN
09:28AM 2 EMAIL TO WALGREENS ON WHICH MR. BALWANI IS ALSO COPIED THAT
09:28AM 3 CONTAINS THE -- TO USE MR. SCHENK'S TERMS IN THE CLOSING
09:28AM 4 ARGUMENT IN THE HOLMES TRIAL, THE ENHANCED VERSION OF ALL THREE
09:28AM 5 REPORTS. THAT'S PRETTY MUCH IT.

09:28AM 6 AND FROM THAT SINGLE INCIDENCE, THE GOVERNMENT
09:28AM 7 EXTRAPOLATES A THEORY UNDER WHICH A JURY COULD FAIRLY CONCLUDE
09:28AM 8 THAT MR. BALWANI WOULD HAVE SEEN THE PRESENCE OR ABSENCE OF A
09:28AM 9 LOGO IN AN ATTACHMENT A MONTH APART AND ATTACHED SOME SORT OF
09:28AM 10 SIGNIFICANCE TO THAT TO SUGGEST HE KNEW IT WAS UNALTERED -- OH,
09:28AM 11 I'M SORRY, YOUR HONOR.

09:28AM 12 THE COURT: NO. GO AHEAD.

09:28AM 13 MR. BRECHER: FRANKLY, YOUR HONOR, I JUST DON'T
09:28AM 14 THINK THAT THAT HOLDS WATER, AND I THINK IN ANOTHER CONTEXT THE
09:29AM 15 GOVERNMENT WOULD AGREE. AND, INDEED, THEY HAVE SHOWN THEIR
09:29AM 16 AGREEMENT WITH THIS GENERAL PRINCIPLE IN BOTH WORD AND DEED.

09:29AM 17 I'LL START WITH WORD. YOUR HONOR WILL LIKELY REMEMBERS
09:29AM 18 THAT MS. HOLMES'S TESTIMONY IN HER OWN TRIAL WAS THAT SHE DID
09:29AM 19 NOT BELIEVE SHE HAD DONE ANYTHING WRONG AND BY SHARING THE
09:29AM 20 ENHANCED VERSIONS OF AT LEAST THE PFIZER AND THE GSK REPORTS
09:29AM 21 WITH THOSE RESPECTIVE COMPANIES, THERE COULDN'T HAVE BEEN ANY
09:29AM 22 INTENT TO DEFRAUD.

09:29AM 23 BUT HERE'S WHAT MR. SCHENK HAD TO SAY ABOUT THAT AT
09:29AM 24 CLOSING ARGUMENT. HE SAID, QUOTE, "MS. HOLMES TOLD YOU ON THE
09:29AM 25 STAND THAT SHE APPLIED THE LOGOS TO THOSE DOCUMENTS. I THINK

09:29AM 1 FROM THAT TO SUGGEST I NEVER WOULD HAVE INTENDED, THOUGHT I WAS
09:29AM 2 DEFRAUDING ANYBODY IF I HAD GIVEN IT BACK TO THE PHARMA
09:29AM 3 COMPANIES."

09:29AM 4 BUT THEN HE GOES ON. "IT CERTAINLY ISN'T ON THE PHARMA
09:29AM 5 COMPANIES TO DISCOVER THAT AND TO REPORT IT BACK TO THERANOS."

09:29AM 6 YOUR HONOR, IN OTHER WORDS, ACCORDING TO THE GOVERNMENT,
09:29AM 7 EVEN THOUGH THE ENHANCED VERSIONS ARE SHARED WITH THE VERY SAME
09:29AM 8 COMPANY WHO'S RESPONSIBLE FOR THESE RELATIONSHIPS AND WHO HAS
09:29AM 9 THE AUTHORITY TO GIVE THERANOS PERMISSION TO USE THEIR LOGOS,
09:30AM 10 THERE'S NO REASON TO BELIEVE THAT THEY WOULD HAVE DISCOVERED
09:30AM 11 IT, EVEN THOUGH IT WAS SENT TO THEM.

09:30AM 12 THAT IS A PRETTY SHARP CONTRAST TO WHAT THE GOVERNMENT IS
09:30AM 13 ARGUING HERE, WHERE MR. BALWANI IS SOMEHOW SUPPOSED TO DIVINE
09:30AM 14 SOME UNAUTHORIZED USE FROM TWO EMAILS A MONTH APART.

09:30AM 15 BUT THE SECOND EXAMPLE, YOUR HONOR, FRANKLY COMES FROM THE
09:30AM 16 GOVERNMENT'S BRIEFING IN THIS VERY MOTION. ITS OPPOSITION SAYS
09:30AM 17 AT LEAST THREE TIMES THAT IN FEBRUARY 2010, SO NOT MARCH,
09:30AM 18 MR. BALWANI SAVED A COPY OF THE UNALTERED SCHERING-PLOUGH
09:30AM 19 REPORT, AND THEY CITE A METADATA STRING.

09:30AM 20 I'M SORRY TO SAY, YOUR HONOR, THE GOVERNMENT IS MISTAKEN
09:30AM 21 AND THEY MISINTERPRETED WHAT THAT DATA MEANS. THE GOVERNMENT
09:30AM 22 CLAIMS THERE'S A DATE CREATED FIELD, WHICH IS RIGHT, WHICH SAYS
09:30AM 23 FEBRUARY 10TH OR FEBRUARY 12TH OF 2010. THAT'S TRUE.

09:30AM 24 BUT THAT FIELD DOES NOT TELL YOU THAT MR. BALWANI SAVED IT
09:30AM 25 ON THAT DATE.

09:31AM 1 NOW, I KNOW MOST NORMAL PEOPLE DON'T FIND METADATA QUITE
09:31AM 2 AS SCINTILLATING AS I DO, SO I'LL TRY TO OFFER A MORE CONCRETE
09:31AM 3 EXAMPLE.

09:31AM 4 MANY JUDGES THROUGHOUT THE COUNTRY HAVE CHAMBERS
09:31AM 5 PROCEDURES ABOUT HOW THEY LIKE EXHIBITS MARKED AND THE LIKE.

09:31AM 6 IF MS. ROBINSON WOULD SEND ME AN EMAIL TODAY WITH
09:31AM 7 YOUR HONOR'S CHAMBERS PROCEEDING AND THAT DOCUMENT WERE CREATED
09:31AM 8 IN JANUARY OF 2017, THE GOVERNMENT COULD HAVE THE SAME
09:31AM 9 METADATA, THE EXACT SAME EVIDENCE, AND TELL YOU THAT I
09:31AM 10 DOWNLOADED THAT DOCUMENT TO MY LAW FIRM SERVER IN JANUARY 2017,
09:31AM 11 BUT OBVIOUSLY THAT'S NOT TRUE BECAUSE MS. ROBINSON WAS NOT
09:31AM 12 WORKING IN YOUR CHAMBERS AT THAT TIME AND I WASN'T WORKING IN
09:31AM 13 MY CURRENT FIRM AT THAT TIME.

09:31AM 14 BUT WE DON'T NEED TO GUESS, AND THE COURT DOES NOT NEED TO
09:31AM 15 GUESS ABOUT WHAT THIS DATE MEANS OR WHAT IT COULD MEAN, BECAUSE
09:31AM 16 WE KNOW FROM THE FILE PATH WHAT IT MEANS. THE FILE PATH
09:31AM 17 INCLUDES THE SUBJECT LINE OF THE MARCH 2010 EMAIL HEADER, RE:
09:31AM 18 TIMES TO TALK. THAT'S THE PARENT DOCUMENT. THAT IS THE SOURCE
09:31AM 19 OF THE UNDERLYING ATTACHMENT.

09:32AM 20 NOW, YOUR HONOR, I'M NOT SUGGESTING THAT THIS MATTERS TO
09:32AM 21 THE ARGUMENTS. I DON'T THINK WHETHER MR. BALWANI GOT IT IN
09:32AM 22 FEBRUARY OR GOT IT IN MARCH, I DON'T THINK ANYTHING TURNS ON
09:32AM 23 THAT.

09:32AM 24 BUT IT'S A TELLING POINT, YOUR HONOR, BECAUSE THE
09:32AM 25 GOVERNMENT LOOKED AT THIS INFORMATION, THEY EXAMINED IT

09:32AM 1 CLOSELY, THE FILE PATH IS A VERY SHORT STRING OF WORDS, AND
09:32AM 2 THEY DREW A CONCLUSION THAT TURNED OUT TO BE INCORRECT, AND
09:32AM 3 THEY REPEATED IT NUMEROUS TIMES IN THEIR BRIEF.

09:32AM 4 I THINK THAT'S A PERFECTLY INNOCENT MISTAKE, AND I'M
09:32AM 5 CONFIDENT THE GOVERNMENT WOULD AGREE.

09:32AM 6 IF I WERE TO SUGGEST THAT IT WERE ANYTHING OTHER THAN A
09:32AM 7 MISTAKE, THAT IT CASTS DOUBT SOMEHOW ON THE INTEGRITY OF THE
09:32AM 8 GOVERNMENT'S SUBMISSIONS, I THINK IT WOULD RUFFLE SOME FEATHERS
09:32AM 9 WITH MY FRIENDS ON THE OTHER SIDE.

09:32AM 10 BUT THE INFERENCES THERE ARE ORDERS OF MAGNITUDE STRONGER
09:32AM 11 THAN WHAT THEY'RE ASKING THE JURY TO SAY ABOUT MR. BALWANI,
09:32AM 12 THAT HE SHOULD HAVE NOTICED, THAT THE JURY CAN FAIRLY CONCLUDE
09:32AM 13 THAT HE DID NOTICE THE PRESENCE OR ABSENCE OF A LOGO ON
09:32AM 14 DOCUMENTS THAT HE RECEIVED A MONTH APART. IT JUST SEEMS ABSURD
09:32AM 15 TO ME, AND I THINK THAT PHILLIPS FORBIDS THAT KIND OF SHOWING.

09:33AM 16 MOVING ON TO VICARIOUS LIABILITY, YOUR HONOR, IT'S A
09:33AM 17 PRETTY SCARY CONCEPT, TO BE FRANK, YOU KNOW, THE IDEA OF BEING
09:33AM 18 CRIMINALLY RESPONSIBLE FOR SOMETHING THAT SOMEONE ELSE DOES.

09:33AM 19 AND THE LAW RECOGNIZES THAT SCARINESS. THAT'S WHY THERE
09:33AM 20 ARE IMPORTANT GUARDRAILS AROUND WHEN IT'S APPROPRIATE TO HOLD
09:33AM 21 SOMEONE ACCOUNTABLE FOR THE ACTS OF ANOTHER.

09:33AM 22 IN THIS CASE THE RELEVANT CATEGORIES ARE COCONSPIRATOR
09:33AM 23 LIABILITY AND COSCHEMER LIABILITY.

09:33AM 24 BUT IN ORDER FOR THAT TO COME BEFORE A JURY, YOUR HONOR
09:33AM 25 MUST FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THE ELEMENTS,

09:33AM 1 THE NECESSARY ELEMENTS OF THOSE SHOWINGS HAVE BEEN MET.

09:33AM 2 AND THE TENOR OF THE GOVERNMENT'S OPPOSITION SUGGEST THAT
09:33AM 3 YOUR HONOR CAN JUST LOOK AT A FEW DISPARATE FACTS AND STRING
09:33AM 4 TOGETHER A FEW INFERENCES, SOME SPECULATION, AND SORT OF SHAKE
09:33AM 5 IT IN A BOX AND SAY, WELL, I GUESS IT'S A JURY QUESTION.

09:33AM 6 BUT THAT'S NOT WHAT THE LAW REQUIRES. THE LAW REQUIRES
09:34AM 7 THE COURT TO LOOK AT ALL OF THE FACTS PROFFERED BY THE PARTIES
09:34AM 8 IN WHATEVER FORMAT YOUR HONOR CHOOSES TO CONSIDER THE RULE 104
09:34AM 9 ISSUE AND DECIDE ON A PREPONDERANCE STANDARD.

09:34AM 10 SO WHAT IS THERE? THE GOVERNMENT'S BRIEF TELLS YOU ABOUT
09:34AM 11 A HOST OF CONDUCT IN BOTH TESTIMONY AND DOCUMENTS FROM
09:34AM 12 NOVEMBER 2013 TO OCTOBER OF 2015.

09:34AM 13 YOUR HONOR, NONE OF THAT TELLS US ABOUT WHETHER THERE WAS
09:34AM 14 A CONSPIRACY OR SCHEME TO DEFRAUD IN APRIL 2010, AND ANY
09:34AM 15 SUGGESTION TO THE CONTRARY DEFIES NOT ONLY THE LAWS OF
09:34AM 16 EVIDENCE, BUT THE LAWS OF REASON, AND NOT TO MENTION SPACE AND
09:34AM 17 TIME, FRANKLY.

09:34AM 18 WHAT WE HAVE IN 2010 IS MR. BALWANI WORKED AT THERANOS.
09:34AM 19 MR. BALWANI WAS IN CHARGE AND HELPED LEAD THE RETAIL
09:34AM 20 PARTNERSHIPS, AND MR. BALWANI AND MS. HOLMES WERE IN A ROMANTIC
09:34AM 21 PARTNERSHIP. THAT'S IT.

09:34AM 22 I DON'T THINK THAT THAT WOULD EVEN SURVIVE A SUMMARY
09:35AM 23 JUDGMENT MOTION IN A CIVIL CASE, YOUR HONOR.

09:35AM 24 WHAT THE GOVERNMENT IS ASKING YOU TO DO IS NOT TO DRAW
09:35AM 25 INFERENCES IN THEIR FAVOR -- AND, AGAIN, THIS IS NOT SOME

09:35AM 1 RULE 29 MOTION WHERE THE COURT IS REQUIRED TO DO SO.

09:35AM 2 THEY'RE ASKING FOR LEAPS ACROSS THESE HUGE EVIDENTIARY
09:35AM 3 GAPS THAT THEY DON'T FILL WITH ANYTHING AND THEY TRY TO
09:35AM 4 BACKFILL WITH EVIDENCE FROM LITERALLY YEARS LATER.

09:35AM 5 THAT'S NOT GOOD ENOUGH, YOUR HONOR.

09:35AM 6 THE COURT WOULD ALSO HAVE TO CONSIDER NOT JUST THE
09:35AM 7 GOVERNMENT'S EVIDENCE, BUT THE COMPLETE PICTURE. THE COURT
09:35AM 8 WOULD HAVE TO CONSIDER -- AND THE GOVERNMENT DOESN'T GRAPPLE
09:35AM 9 WITH THIS IN THEIR OPPOSITION -- THE EXCULPATORY AUGUST 2009
09:35AM 10 COMMUNICATION TO MR. BALWANI TELLING HIM EXACTLY WHAT INVESTORS
09:35AM 11 LATER HEARD, THAT PHARMACEUTICAL COMPANIES HAD ROBUSTLY
09:35AM 12 VALIDATED THE TECHNOLOGY.

09:35AM 13 FRANKLY, THE COURT WOULD HAVE TO CONSIDER OTHER ISSUES,
09:35AM 14 LIKE MR. BALWANI WAS LARGELY IN THAILAND FOR MANY OF HIS EARLY
09:35AM 15 MONTHS AT THE COMPANY, INCLUDING A TRIP FROM MID-FEBRUARY TO
09:35AM 16 EARLY MARCH.

09:35AM 17 THE COURT WOULD HAVE TO CONSIDER HIS DISTANCE CONCEPTUALLY
09:35AM 18 FROM THE PHARMACEUTICAL RELATIONSHIP, SOMETHING THAT MS. HOLMES
09:36AM 19 MANAGED AND NOT HIM.

09:36AM 20 AND WE KNOW THAT THAT'S NOT ENOUGH. WE KNOW THAT'S NOT
09:36AM 21 ENOUGH BECAUSE OF YOUR OWN JURY INSTRUCTIONS IN THE HOLMES
09:36AM 22 TRIAL THAT A MERE BUSINESS PARTNERSHIP OR A MERE ROMANTIC
09:36AM 23 PARTNERSHIP WITHOUT MORE IS NOT ENOUGH TO SHOW A CONSPIRACY.

09:36AM 24 SO I DON'T THINK THE GOVERNMENT CAN GET THERE.

09:36AM 25 AND THEN LAST, YOUR HONOR, EVEN IF THE COURT IS INCLINED

09:36AM 1 TO DISAGREE WITH ME ON ONE OR MORE OF THOSE THEORIES, I THINK
09:36AM 2 RULE 403 BARS THE EVIDENCE, AND THAT'S BECAUSE WE HAVE THIS NEW
09:36AM 3 CONTEXT OF MS. HOLMES'S TESTIMONY.

09:36AM 4 MR. BALWANI FACES A RANGE OF CHARGES, TWO CONSPIRACY
09:36AM 5 COUNTS, BUT ALSO TEN MORE SUBSTANTIVE WIRE FRAUD COUNTS.

09:36AM 6 AND THE JURY CAN REACH DIFFERENT DECISIONS ON EACH OF
09:36AM 7 THOSE COUNTS AND, INDEED, THE HOLMES JURY DID SO, DIVIDING IT
09:36AM 8 SORT OF A THREE-WAY SPLIT, AS IT WERE, IN POSSIBLE OUTCOMES.

09:36AM 9 IF THE JURY DOES NOT UNDERSTAND THE FULL CONTEXT THAT IS
09:36AM 10 NOW AVAILABLE TO THE PARTIES, IT DANGEROUSLY INVITES THEM TO
09:37AM 11 SPECULATE, AND THAT'S WHAT IT WOULD BE, THAT IT WAS MR. BALWANI
09:37AM 12 WHO PERSONALLY PERFORMED THESE ACTS. BUT THERE'S NO ADMISSIBLE
09:37AM 13 WAY OF OFFERING THE JURY THE REQUIRED CONTEXT WITHOUT
09:37AM 14 SACRIFICING MR. BALWANI'S CONFRONTATION RIGHTS.

09:37AM 15 MS. HOLMES TESTIFIED THAT SHE DID IT, BUT AS THE
09:37AM 16 GOVERNMENT POINTS OUT QUITE RIGHTLY IN ITS BRIEF, SHE DOESN'T
09:37AM 17 SAY WHETHER OR NOT MR. BALWANI KNEW.

09:37AM 18 AND THERE'S A REASON WE DON'T KNOW THE ANSWER TO THAT.
09:37AM 19 IT'S BECAUSE MR. LEACH, WHEN HE WAS QUITE EFFECTIVELY
09:37AM 20 CROSS-EXAMINING MS. HOLMES, LACKED ANY INCENTIVE TO ASK HER
09:37AM 21 THAT QUESTION.

09:37AM 22 AND MR. BALWANI, WHO WAS NOT PRESENT, LACKED THE
09:37AM 23 OPPORTUNITY TO ASK HER THAT QUESTION.

09:37AM 24 THINGS MAY CHANGE IF SHE SHOWS UP ON A WITNESS LIST AND
09:37AM 25 TESTIFIES. BUT UNLESS THAT HAPPENS, THAT CRITICAL CONTEXT

09:37AM 1 NECESSARY FOR THE JURY TO UNDERSTAND WHO DID WHAT AND WHAT WERE
09:37AM 2 THE ROLES, IT WON'T COME INTO THE CASE.

09:37AM 3 AND IT'S A PRETTY SCARY HYPOTHETICAL WHEN YOU SORT OF SPIN
09:37AM 4 OUT WHAT WOULD HAPPEN.

09:37AM 5 BEFORE THE HOLMES TESTIMONY, THE GOVERNMENT'S PLAN, AND I
09:37AM 6 THINK IT WAS THE PLAN THAT THEY WERE EXECUTING IN THE HOLMES
09:38AM 7 TRIAL, WAS PERFECTLY ABOVE BOARD, RIGHT? YOU PRESENT TO THE
09:38AM 8 JURY, HERE'S THE BEFORE VERSION OF THE PHARMACEUTICAL REPORT,
09:38AM 9 HERE'S THE AFTER. THESE PHARMA WITNESSES ARE GOING TO SAY, WE
09:38AM 10 DIDN'T AUTHORIZE THESE CHANGES AND TO OUR KNOWLEDGE THEY
09:38AM 11 WEREN'T AUTHORIZED. MEMBERS OF THE JURY, HERE'S AN EMAIL FROM
09:38AM 12 MS. HOLMES, YOU DRAW YOUR OWN CONCLUSION.

09:38AM 13 AND THAT WOULD BE FINE.

09:38AM 14 BUT NEW FACTS MEAN NEW LEGAL CONSEQUENCES. NOW WE KNOW
09:38AM 15 MORE.

09:38AM 16 AND IT WOULD BE PATENTLY UNFAIR TO INVITE THE JURY TO LOOK
09:38AM 17 AT THE ONLY DEFENDANT WHO IS GOING TO BE IN FRONT OF THEM, AND
09:38AM 18 THAT'S MY CLIENT, AND SAY, YOU KNOW WHAT, MAYBE HE DID IT, WHEN
09:38AM 19 THE GOVERNMENT KNOWS THAT'S NOT TRUE, THE COURT -- AND I KNOW
09:38AM 20 YOUR HONOR WOULD BE DUTY BOUND TO SORT OF SIT IMPASSIVELY AND
09:38AM 21 NOT COMMENT ON THE EVIDENCE -- KNOWS IT'S NOT TRUE, AND THE
09:38AM 22 DEFENSE KNOWS IT'S NOT TRUE.

09:38AM 23 THE ONLY ONE SORT OF BEING MISLED HERE WOULD BE THE JURY.

09:38AM 24 JUST WRAPPING UP, HERE, YOUR HONOR, I REALLY THINK IT'S
09:38AM 25 IMPORTANT TO EMPHASIZE JUST HOW NARROW THE RELIEF THAT WE'RE

09:39AM 1 REQUESTING IS. THE GOVERNMENT MADE SOME ALLUSION IN ITS
09:39AM 2 OPPOSITION TO THE NOTION OF THIS EVIDENCE BEING OFFERED TO
09:39AM 3 PROVE THE FALSITY OF REPRESENTATIONS LATER MADE TO INVESTORS.

09:39AM 4 THAT'S FINE. BOTH PARTIES HAVE A PERFECTLY LEGITIMATE
09:39AM 5 INTEREST IN RELYING ON EVIDENCE ABOUT THERANOS'S RELATIONSHIP
09:39AM 6 WITH THESE PHARMACEUTICAL COMPANIES.

09:39AM 7 FROM THE DEFENSE PERSPECTIVE, IT'S FOR MR. BALWANI'S
09:39AM 8 INTENT. IT'S WHAT HE WAS BEING TOLD IN REALTIME.

09:39AM 9 AND FROM THE GOVERNMENT'S PERSPECTIVE, IT'S FALSITY. IT'S
09:39AM 10 THERANOS TOLD INVESTORS OUR TECHNOLOGY HAS BEEN COMPREHENSIVELY
09:39AM 11 VALIDATED BY PHARMACEUTICAL COMPANIES.

09:39AM 12 IF THE GOVERNMENT WANTS TO OFFER EVIDENCE TO SUGGEST THAT
09:39AM 13 THAT'S NOT TRUE, PERFECTLY FAIR GAME. WE MAY HAVE TRIAL
09:39AM 14 OBJECTIONS DEPENDING ON THE QUESTIONS OR THE PARTICULAR
09:39AM 15 EXHIBITS OFFERED, BUT WE'RE NOT HERE TRYING TO STOP THEM FROM
09:39AM 16 DOING THAT.

09:39AM 17 WE'RE ONLY ASKING FOR A FAIR EXCLUSION OF THIS VERY NARROW
09:39AM 18 CATEGORY OF EVIDENCE, THIS EVIDENCE OF DOCTORING WHICH THERE'S
09:39AM 19 NO TETHER WHATSOEVER TO MY CLIENT AND IT COULD BE INCREDIBLY
09:40AM 20 PREJUDICIAL FOR THE JURY.

09:40AM 21 THANK YOU, YOUR HONOR.

09:40AM 22 THE COURT: THANK YOU.

09:40AM 23 WOULD IT -- IF THE GOVERNMENT WERE TO INTRODUCE, VIA SOME
09:40AM 24 WITNESSES, THE FACT THAT, LET'S SAY FROM THE PHARMACEUTICAL
09:40AM 25 COMPANIES, EACH OF THE TWO, TWO DOCUMENTS, WHATEVER THEY ARE,

09:40AM 1 IS THIS YOURS? YES. DID YOU SEND THIS? YES. WHATEVER IT IS,
09:40AM 2 LAY A FOUNDATION FOR THE UNALTERED, I'LL JUST CALL IT THAT.

09:40AM 3 AND THEN ASK ABOUT THE OTHER ONE, WITHOUT ATTRIBUTION, DID
09:40AM 4 YOU RECEIVE THIS FROM MS. HOLMES? OR THE SOURCE OF IT, WHO DID
09:40AM 5 YOU GET THIS FROM? ELIZABETH HOLMES.

09:40AM 6 IS THAT ADMISSIBLE?

09:40AM 7 MR. BRECHER: NO, YOUR HONOR. AND THAT'S PRECISELY
09:40AM 8 THE CATEGORY OF EVIDENCE THAT WE THINK IS NOT ADMISSIBLE, AND
09:40AM 9 IT'S PRECISELY BECAUSE THE GOVERNMENT CANNOT SHOW ANY
09:40AM 10 FOUNDATION -- THERE'S NO SHOWING THAT MR. BALWANI MADE THESE
09:40AM 11 ALTERATIONS. THERE'S NO SHOWING THAT MR. BALWANI KNEW THESE
09:41AM 12 ALTERATIONS HAD BEEN MADE AT ALL, MUCH LESS WITHOUT
09:41AM 13 AUTHORIZATION.

09:41AM 14 THE COURT: SO YOU'RE SAYING IT'S NOT RELEVANT TO
09:41AM 15 YOUR CLIENT?

09:41AM 16 MR. BRECHER: THAT'S CORRECT, YOUR HONOR.

09:41AM 17 THE COURT: IT HAS RELEVANCE, BUT NOT TO YOUR
09:41AM 18 CLIENT.

09:41AM 19 MR. BRECHER: EXACTLY, YOUR HONOR.

09:41AM 20 IT COULD COME IN UNDER A THEORY OF VICARIOUS LIABILITY IF
09:41AM 21 THE GOVERNMENT COULD MAKE THAT SHOWING IN APRIL 2010, AND IF
09:41AM 22 THEY COULD GET OVER THE 403 HURDLE.

09:41AM 23 BUT I DON'T THINK THE GOVERNMENT CAN MAKE EITHER SUCH
09:41AM 24 SHOWING.

09:41AM 25 THE COURT: ARE THERE OTHER -- CAN YOU FATHOM ANY

09:41AM 1 OTHER REASON OR ANY OTHER METHOD OF ADMISSIBILITY FOR THOSE TWO
09:41AM 2 LETTERS THAT WE TALKED ABOUT, OR THESE DOCUMENTS THAT WE'RE
09:41AM 3 TALKING ABOUT?

09:41AM 4 IS THERE ANY OTHER METHOD THAT THOSE COULD COME IN?

09:41AM 5 MR. BRECHER: THE DOCUMENTS THEMSELVES?

09:41AM 6 THE COURT: YES.

09:41AM 7 MR. BRECHER: ABSOLUTELY, YOUR HONOR.

09:41AM 8 AGAIN, I'M NOT TRYING TO BAR THE GOVERNMENT FROM SHOWING
09:41AM 9 FALSITY. THE INVESTORS RECEIVED THESE DOCUMENTS, AND THE CORE
09:41AM 10 CLAIM IS THAT THERANOS HAS COMPREHENSIVELY VALIDATED THE
09:41AM 11 TECHNOLOGY, AND IF THEY WANT TO CALL OTHER WITNESSES OR PUT ON
09:41AM 12 OR USE OTHER EXHIBITS TO SUGGEST, NO, THAT'S NOT TRUE, THAT'S
09:41AM 13 FINE. THAT'S WHAT TRIALS ARE FOR. WE HAVE CROSS-EXAMINATION
09:42AM 14 FOR THAT.

09:42AM 15 I'M NOT HERE TRYING TO TIE THE GOVERNMENT'S HANDS. I'M
09:42AM 16 ASKING THAT THE FIGHT BE FAIR.

09:42AM 17 ONE WAY, AND I'M JUST THINKING OUT LOUD ABOUT THE
09:42AM 18 PRACTICALITIES, IS JUST AS YOUR HONOR FREQUENTLY DID IN THE
09:42AM 19 HOLMES TRIAL, AND JUST AS COURTS FREQUENTLY ORDER REDACTIONS OF
09:42AM 20 VARIOUS EXHIBITS ON 403 GROUNDS, AND ON FRANKLY ANY NUMBER OF
09:42AM 21 GROUNDS, THE COURT COULD IMPOSE THAT THE PARTIES CONFER ABOUT
09:42AM 22 AN AGREED UPON SORT OF UNIFORM VERSION OF THESE REPORTS, MAYBE
09:42AM 23 WITH JUST THE THERANOS LOGO OR NO LOGOS. I'M SORT OF
09:42AM 24 INDIFFERENT ON THAT, YOUR HONOR.

09:42AM 25 SO, NO, THE REPORTS CAN COME IN JUST FINE. IT'S EVIDENCE

09:42AM 1 AND ARGUMENTS ABOUT ALTERATION, ABOUT DOCTORING. THAT'S WHAT I
09:42AM 2 THINK HAS TO STAY OUT.

09:42AM 3 THE COURT: OKAY. I SEE. THANK YOU.

09:42AM 4 MR. BRECHER: THANK YOU, YOUR HONOR.

09:42AM 5 THE COURT: MS. VOLKAR.

09:42AM 6 MS. VOLKAR: THANK YOU, YOUR HONOR.

09:42AM 7 WHAT I HEARD MY COLLEAGUE SAY WERE SOME GREAT TOPICS FOR
09:42AM 8 CROSS-EXAMINATION AND CLOSING ARGUMENT.

09:42AM 9 BUT WHAT I DIDN'T HEAR ONCE, UNTIL YOUR HONOR JUST ASKED
09:43AM 10 THE QUESTION, WAS ANY THEORY FOR NOT ADMITTING THESE EXHIBITS.

09:43AM 11 YOUR HONOR ASKED ABOUT RELEVANCE. WE HAVE NOT ONCE HEARD
09:43AM 12 ABOUT ANYTHING ABOUT THE ACTUAL STANDARDS FOR ADMITTING THESE
09:43AM 13 DOCUMENTS, ARE THEY RELEVANT? ARE THEY UNDULY PREJUDICIAL?
09:43AM 14 ARE THEY HEARSAY?

09:43AM 15 THAT'S NOT THE BASIS OF THIS. THEIR MOTION IS ALMOST
09:43AM 16 ENTIRELY ABOUT VICARIOUS LIABILITY.

09:43AM 17 AS WE DESCRIBED IN OUR OPPOSITION, WE -- VICARIOUS
09:43AM 18 LIABILITY IS ON THE TABLE, AND I WILL GET THERE.

09:43AM 19 BUT WE THINK THAT THESE DOCUMENTS ARE RELEVANT TO
09:43AM 20 MR. BALWANI'S KNOWLEDGE, AND THERE ARE FACTS. I UNDERSTAND
09:43AM 21 THAT MY COLLEAGUE DISAGREES WITH A REASONABLE INFERENCE THAT
09:43AM 22 CAN BE DRAWN FROM THEM, BUT BOTH SIDES AGREE ON THE FACTS.

09:43AM 23 AND I THINK WHEN WE'RE IN THAT POSITION, AND I'M GOING TO
09:43AM 24 WALK THROUGH THEM IN JUST A MOMENT, WE'RE REALLY IN A POSITION
09:43AM 25 WHERE IT'S UP TO THE JURY, THE DECIDER OF FACTS, TO DECIDE

09:43AM 1 WHICH INFERENCE THEY BELIEVE.

09:43AM 2 NOW, WHAT ARE THOSE FACTS?

09:43AM 3 I KNOW MY COLLEAGUE WALKED THROUGH THEM AS WELL, SO I
09:43AM 4 DON'T WANT TO BELABOR THEM, BUT I DO WANT TO POINT OUT THERE
09:44AM 5 ARE TWO DIFFERENT VIEWS.

09:44AM 6 THE PARTIES, BOTH MR. BALWANI AND MS. HOLMES, WERE IN A
09:44AM 7 ROMANTIC RELATIONSHIP. WE KNOW AND WE SEE FROM THE TEXT
09:44AM 8 MESSAGES THAT DON'T GO BACK ALL OF THE WAY TO 2010 THAT THEY'RE
09:44AM 9 CONSTANTLY IN COMMUNICATION.

09:44AM 10 WE KNOW THAT THEY'RE CONSTANTLY DISCUSSING VARIOUS ASPECTS
09:44AM 11 OF THE COMPANY IN THAT ROMANTIC RELATIONSHIP.

09:44AM 12 SO IT'S NOT JUST, WHAT DO YOU WANT TO HAVE FOR DINNER
09:44AM 13 TONIGHT? THEY'RE TALKING ABOUT WHAT DO WE WANT TO HAVE GO TO
09:44AM 14 THIS INVESTOR? WHAT DO WE WANT IN THIS DECK? THEY'RE
09:44AM 15 CONSTANTLY TALKING ABOUT TOPICS RELATED TO THE BUSINESS.

09:44AM 16 HE JOINS THE COMPANY, AND WHAT IS THE FIRST THING HE DOES
09:44AM 17 WHEN HE JOINS THE COMPANY? HE'S GUARANTEEING WHAT IS AT LEAST
09:44AM 18 A \$10 MILLION LOAN. THERE'S SOME DOCUMENTS THAT SUGGEST THAT
09:44AM 19 IT'S MORE, AND HE'S GUARANTEEING A LOAN.

09:44AM 20 WHY WOULD YOU DO THAT?

09:44AM 21 HE MUST KNOW THE COMPANY IS STRUGGLING AND OUT OF MONEY.
09:44AM 22 SO HE'S JOINING THE COMPANY KNOWING IT'S STRUGGLING FINANCIALLY
09:44AM 23 AND PUTTING HIS OWN MONEY ON THE LINE THROUGH A PERSONAL
09:44AM 24 GUARANTEE OF A LOAN TO THE COMPANY THAT HIS GIRLFRIEND IS
09:45AM 25 RUNNING.

09:45AM 1 WHAT DOES HE GET IN RETURN?

09:45AM 2 HE GETS TO BE COO, AND HE GETS TO BE IN CHARGE OF THE
09:45AM 3 RETAIL RELATIONSHIPS. THAT INCLUDES WITH WALGREENS, WITH
09:45AM 4 SAFEWAY, AND AN ATTEMPT WITH WAL-MART.

09:45AM 5 WHAT IS AMONG THE FIRST THING HE DOES?

09:45AM 6 IN MARCH OF 2010, HE'S ON AN EMAIL THAT GOES TO WAL-MART
09:45AM 7 THAT INCLUDES AN UNALTERED REPORT.

09:45AM 8 AND THIS IS TRULY WHERE MY COLLEAGUE AND I PART WAYS,
09:45AM 9 BECAUSE I THINK -- I KNOW HE SPENT A DECENT AMOUNT OF TIME
09:45AM 10 TALKING ABOUT THE METADATA AND WHAT INFERENCE CAN BE DRAWN FROM
09:45AM 11 THAT, BUT THE FACT OF THE MATTER IS THAT HE MISSES THE POINT
09:45AM 12 WHY THE GOVERNMENT POINTED TO THIS DOCUMENT.

09:45AM 13 MR. BALWANI THOUGHT THIS UNALTERED SCHERING-PLOUGH RELATED
09:45AM 14 REPORT WAS IMPORTANT ENOUGH TO SAVE IN HIS FILES.

09:45AM 15 WHY WOULD SOMEONE DO THAT?

09:45AM 16 I UNDERSTAND I'M SPECULATING, BUT SOMEONE WOULD DO THAT
09:45AM 17 BECAUSE HE'S ABOUT TO TAKE CHARGE OF THE RETAIL RELATIONSHIP
09:45AM 18 AND HE MIGHT NEED TO SEND THAT.

09:45AM 19 IMMEDIATELY THEREAFTER, AN EMAIL GOES TO WAL-MART WITH THE
09:46AM 20 UNALTERED REPORTS. THAT RELATIONSHIP GOES NOWHERE.

09:46AM 21 ONE MONTH LATER HE'S ON AN EMAIL TO WALGREENS AND SAFEWAY
09:46AM 22 WITH ALTERED PHARMACEUTICAL REPORTS. THAT RELATIONSHIP GOES
09:46AM 23 SOMEWHERE.

09:46AM 24 AND IN THE YEARS -- AND I UNDERSTAND WE'RE FOCUSED ON THE
09:46AM 25 EARLY TIME PERIOD, BUT I DO THINK IT'S TELLING THAT IN THE

09:46AM 1 YEARS LATER, 2013 TO 2015, MR. BALWANI, WHO HAS THE UNALTERED
09:46AM 2 VERSIONS OF THE REPORT, AT LEAST ONE, SAVED IN HIS FILES, NEVER
09:46AM 3 SENDS AN UNALTERED VERSION TO AN INVESTOR. HE ONLY EVER SENDS
09:46AM 4 ALTERED VERSIONS WITH BOTH LOGOS WITH ENHANCED LANGUAGE.

09:46AM 5 THE COURT: IS THERE -- I'M SORRY TO INTERRUPT YOU.
09:46AM 6 IS THERE EVIDENCE, WILL THERE BE EVIDENCE THAT HE ACTUALLY
09:46AM 7 DID SEND THE ALTERED VERSIONS?

09:46AM 8 MS. VOLKAR: YES, YOUR HONOR, AND I INCLUDED SOME IN
09:46AM 9 MY EXHIBITS. I'M HAPPY TO POINT THE COURT TO THEM.

09:47AM 10 THE FIRST ONE THAT IS COMING TO MIND IS HE SENT ALTERED
09:47AM 11 VERSIONS TO BDT, AND I CAN GRAB THE EXHIBIT NUMBER FOR THAT IF
09:47AM 12 YOU'RE --

09:47AM 13 THE COURT: NO. THAT'S FINE. IT'S IN THE DOCUMENTS
09:47AM 14 THAT YOU FILED?

09:47AM 15 MS. VOLKAR: THAT'S CORRECT, YOUR HONOR.

09:47AM 16 AND HE IS TALKING WITH ELIZABETH HOLMES ABOUT SENDING THE
09:47AM 17 REPORTS TO OTHER INVESTORS AS WELL.

09:47AM 18 BUT THE EXAMPLE WE ATTACHED WHERE IT HAS THE REPORTS WITH
09:47AM 19 IT I BELIEVE IS THE BDT ONE, BUT WE DID INCLUDE EXAMPLES IN OUR
09:47AM 20 FILING.

09:47AM 21 SO WHEN WE GET TO PHILLIPS -- I'M SORRY. I WANT TO SWITCH
09:47AM 22 FROM THOSE ARE THE FACTS. THOSE ARE FACTS THAT KNOW THAT IT'S
09:47AM 23 CIRCUMSTANTIAL EVIDENCE THAT MR. BALWANI SAW UNALTERED REPORTS
09:47AM 24 AND SAW THE PART THAT HE WAS RESPONSIBLE FOR, THE RETAIL
09:47AM 25 RELATIONSHIP WITH WAL-MART, GO NOWHERE. AND THEN HE SAW THE

09:47AM 1 ALTERED REPORTS GO TO WALGREENS AND SAFEWAY.

09:47AM 2 EVEN IF HE DOESN'T HAVE THE SAME LEVEL OF KNOWLEDGE AS
09:47AM 3 MS. HOLMES ABOUT THE PHARMACEUTICAL RELATIONSHIPS, HE'S ON
09:48AM 4 THOSE DOCUMENTS. HE IS SEEING THE OUTCOME.

09:48AM 5 AND LATER ON IN THE FRAUD SCHEME, HE'S ENCOURAGING IT AND
09:48AM 6 HE'S GOING ALONG WITH IT. HE'S ONLY SENDING THE ALTERED
09:48AM 7 VERSIONS OF DOCUMENTS TO INVESTORS.

09:48AM 8 SO I DO THINK THAT A JURY CAN INFER FROM THAT KNOWLEDGE.

09:48AM 9 AND WHEN I GET TO PHILLIPS, I THINK THIS CASE IS
09:48AM 10 INCREDIBLY DISTINGUISHABLE, OR IS VERY FAR AFIELD FROM
09:48AM 11 PHILLIPS. AND OF COURSE YOUR HONOR IS VERY FAMILIAR WITH THAT.
09:48AM 12 IT CAME UP FREQUENTLY IN THE LAST TRIAL.

09:48AM 13 BUT PHILLIPS WAS TALKING ABOUT SOMETHING OF WHICH A
09:48AM 14 DEFENDANT KNOWS NOTHING ABOUT. IN PHILLIPS, THE ALTERED
09:48AM 15 DOCUMENTS WERE NEVER SEEN OR SENT TO CODEFENDANTS AND WERE ONLY
09:48AM 16 SENT TO UNNAMED COCONSPIRATORS, AND THEREFORE, THESE DEFENDANTS
09:48AM 17 WHO NEVER SAW THE DOCUMENTS, THE NINTH CIRCUIT REASONED, CAN'T
09:48AM 18 HAVE THE KNOWLEDGE OF THESE UNNAMED COCONSPIRATORS IMPUTED TO
09:49AM 19 THEM, AND IT WAS SPECIFICALLY CUSTOMER COMPLAINTS ABOUT THE
09:49AM 20 LETTERS.

09:49AM 21 YOUR HONOR USED THAT CASE TO EXCLUDE EVIDENCE OF CUSTOMER
09:49AM 22 COMPLAINTS OF THERANOS THAT WENT TO MR. BALWANI, BUT THAT THERE
09:49AM 23 WAS NO EMAIL SHOWING THAT THEY WENT TO MS. HOLMES.

09:49AM 24 THAT IS AN EXAMPLE OF SOMETHING THAT IS GOING ONLY TO ONE
09:49AM 25 CODEFENDANT OR COCONSPIRATOR OR COSCHEMER, BUT NOT TO ANOTHER.

09:49AM 1 MR. BALWANI IS ON THESE EMAILS, SO HE IS AWARE OF THE KEY
09:49AM 2 FACTS, ALTERED, UNALTERED, AND BOTH OF THOSE DOCUMENTS ARE ON
09:49AM 3 THE GOVERNMENT'S EXHIBIT LIST.

09:49AM 4 SO PHILLIPS IS I JUST THINK IRRELEVANT IN THIS PARTICULAR
09:49AM 5 SCENARIO.

09:49AM 6 ALSO, I BELIEVE MY COLLEAGUE REFERENCED THE FACT THAT
09:49AM 7 MR. BALWANI IS ON ONE OF THE GSK EMAILS.

09:49AM 8 THE DEFENSE HAS NOT POINTED TO ANYTHING, AND THE
09:49AM 9 GOVERNMENT ARGUED THIS IN THE OTHER CASE, THAT SHOWED THE
09:50AM 10 PHARMACEUTICAL COMPANIES GIVING PERMISSION TO SEND THESE
09:50AM 11 REPORTS, ALL OF WHICH WERE GENERATED BY THERANOS. I THINK
09:50AM 12 THAT'S IMPORTANT TO REITERATE. THE PHARMACEUTICAL COMPANIES
09:50AM 13 NEVER GAVE PERMISSION TO SEND THESE REPORTS TO ANYONE OUTSIDE
09:50AM 14 OF THE PHARMACEUTICAL COMPANY.

09:50AM 15 THEY ALL HAD CONTRACTS, IT CAME OUT THROUGH
09:50AM 16 CROSS-EXAMINATION OF MS. HOLMES, THEY ALL HAD CONTRACTS THAT
09:50AM 17 SAID SPECIFICALLY THESE REPORTS AND THIS DATA WAS NOT ALLOWED
09:50AM 18 TO BE SHARED, BUT MS. HOLMES AND MR. BALWANI HAVE NEVER SHOWN
09:50AM 19 THAT THEY ACTUALLY GOT THAT PERMISSION IN ORDER TO SHARE THESE.

09:50AM 20 AND MR. BALWANI IS ON SEVERAL EMAILS WHERE THEY SEND THESE
09:50AM 21 REPORTS FREELY AND WITH THE ADDED LOGOS. SO THAT'S ANOTHER
09:50AM 22 ASPECT OF EVEN THOUGH HE WAS ON AN EMAIL TO GSK WITH THIS
09:50AM 23 REPORT, IT'S STILL NOT PROVIDING THAT LINK THAT THERE WAS
09:50AM 24 PERMISSION TO SEND IT TO OTHER INVESTORS, WHICH HE HIMSELF
09:50AM 25 LATER DID.

09:50AM 1 SO NOW WE GET TO VICARIOUS LIABILITY, AND I WANT TO BE
09:50AM 2 EXTRA CLEAR HERE BECAUSE THE GOVERNMENT'S OPPOSITION SPENDS A
09:51AM 3 DECENT OF TIME ON THIS AND IT IS IMPORTANT.

09:51AM 4 THERE IS EVIDENCE OF MR. BALWANI'S ACTUAL KNOWLEDGE. THAT
09:51AM 5 MEANS THIS ISN'T A PHILLIPS SCENARIO. THIS EVIDENCE IS
09:51AM 6 ABSOLUTELY RELEVANT.

09:51AM 7 AND IN THE HOLMES CASE, THE GOVERNMENT DID NOT KNOW THAT
09:51AM 8 MS. HOLMES WAS GOING TO TESTIFY.

09:51AM 9 AND TO TAKE MY COLLEAGUE'S ARGUMENT TO ITS FULLEST EXTENT,
09:51AM 10 HE IS SAYING, I BELIEVE INCORRECTLY, THAT THE GOVERNMENT
09:51AM 11 SHOULDN'T HAVE BEEN ABLE TO ADMIT THIS EVIDENCE IN THE PAST
09:51AM 12 CASE IN ITS CASE-IN-CHIEF BECAUSE IT DIDN'T KNOW WHO ACTUALLY
09:51AM 13 ALTERED THE DOCUMENTS, AND ONLY WHEN MS. HOLMES TESTIFIED THAT
09:51AM 14 SHE ALTERED THE DOCUMENTS DID THIS EVIDENCE BECOME RELEVANT AND
09:51AM 15 ADMISSIBLE. AND THAT'S JUST WRONG, YOUR HONOR.

09:51AM 16 WE'RE SEEKING TO ADMIT THE SAME EVIDENCE IN THIS CASE.
09:51AM 17 IT'S NOT LIKE THIS IS SOMETHING THAT HAPPENED IN 2008 BEFORE
09:51AM 18 MR. BALWANI JOINED THE COMPANY. THIS HAPPENED IN 2010. HE'S
09:51AM 19 ON THE KEY EMAILS. HE'S PART OF THE COMPANY. HE'S
09:52AM 20 ROMANTICALLY INVOLVED WITH HER. THERE ARE A LOT OF DIFFERENT
09:52AM 21 ASPECTS. HE ENDS UP SENDING THESE SAME ALTERED REPORTS LATER,
09:52AM 22 EVEN THOUGH HE HAS UNALTERED VERSIONS SAVED IN HIS COMPUTER
09:52AM 23 FILES.

09:52AM 24 AS I PROMISED, I WANT TO TURN QUICKLY TO VICARIOUS
09:52AM 25 LIABILITY. MY COLLEAGUE TAKES ISSUE WITH THE CONCEPT OF

09:52AM 1 VICARIOUS LIABILITY, BUT WE ARE IN THE NINTH CIRCUIT AND THAT
09:52AM 2 STILL IS THE CONTROLLING LAW.

09:52AM 3 ONE IS RESPONSIBLE FOR THE ACTS OF A COSCHEMER OR
09:52AM 4 COCONSPIRATOR THAT ARE DURING THE CONSPIRACY AND IN FURTHERANCE
09:52AM 5 OF THE CONSPIRACY, AND THIS IS EXACTLY WHAT THE GOVERNMENT
09:52AM 6 ALLEGES IN THE THIRD SUPERSEDING INDICTMENT.

09:52AM 7 THE CONSPIRACY AND SCHEME TO DEFRAUD INVESTORS BEGAN IN
09:52AM 8 2010 WITH WALGREENS, AND ONE OF THE LIES THAT WALGREENS WAS
09:52AM 9 TOLD WAS THE FACT THAT PHARMACEUTICAL COMPANIES HAD VALIDATED
09:52AM 10 THERANOS, AND ONE OF THE VEHICLES FOR SHOWING AND DEMONSTRATING
09:52AM 11 THAT LIE WAS THESE ALTERED PHARMACEUTICAL REPORTS.

09:52AM 12 THIS IS CORELY AND SQUARELY WITHIN THE CONSPIRACY AND THE
09:53AM 13 SCHEME TO DEFRAUD THAT THE GOVERNMENT HAS ALLEGED AND PROVED IN
09:53AM 14 THE LAST TRIAL AND BELIEVES IT WILL MEET ITS BURDEN TO DO SO
09:53AM 15 HERE.

09:53AM 16 SO WITH THAT, IT BRINGS ME TO RULE 403, AND I DON'T THINK
09:53AM 17 I NEED TO SAY MUCH MORE THERE BECAUSE ONCE, ONCE THE COURT
09:53AM 18 REALIZES, AS THE GOVERNMENT SUBMITS, THAT THE EVIDENCE IS
09:53AM 19 RELEVANT, IT'S NOT HEARSAY, IT'S VERY PROBATIVE, AND IT'S NOT
09:53AM 20 PREJUDICIAL, THE ONE POINT THAT MY COLLEAGUE ADDED IN ADDITION
09:53AM 21 IS THE -- THAT IT WOULD MISLEAD OR CONFUSE THE JURY.

09:53AM 22 AND IT DIDN'T MISLEAD OR CONFUSE THE LAST JURY, AND THEY
09:53AM 23 WILL BE ABLE, THROUGH CROSS-EXAMINATION AND CLOSING ARGUMENT,
09:53AM 24 TO POINT OUT TO THE JURY THAT HE WASN'T -- THAT MR. BALWANI WAS
09:53AM 25 NOT INVOLVED WITH THE PHARMACEUTICAL RELATIONSHIPS.

09:53AM 1 THE GOVERNMENT INTENDS TO CALL PHARMACEUTICAL WITNESSES.
09:53AM 2 THEY'LL BE ABLE TO ASK THEM, DID YOU EVER -- DO YOU EVEN KNOW
09:53AM 3 WHO MR. BALWANI IS? I DON'T MEAN TO DO MY COLLEAGUE'S JOB FOR
09:54AM 4 HIM OR PUT WORDS IN HIS MOUTH, BUT THAT IS STILL OPEN AND
09:54AM 5 AVAILABLE TO THEM. THIS EVIDENCE CAN STILL BE TESTED THROUGH
09:54AM 6 THE TRIAL PROCESS, AND RULE 403 IS NOT THE BASIS TO EXCLUDE IT.

09:54AM 7 AND THEN I SAID THAT WAS THE LAST POINT, BUT THE VERY LAST
09:54AM 8 POINT IS, OF COURSE, THIS EVIDENCE IS IMPORTANT FOR FALSITY
09:54AM 9 BECAUSE IT IS ONE OF THE WAYS THAT NOT JUST WALGREENS, BUT
09:54AM 10 LATER INVESTORS -- YOUR HONOR HEARD MR. MOSLEY, LISA PETERSON,
09:54AM 11 SEVERAL OF THE INVESTORS TALKED ABOUT HOW IMPORTANT THESE
09:54AM 12 REPORTS WERE TO THEM AND SEEING THE LOGO MADE THEM THINK THAT
09:54AM 13 THESE WERE AUTHORED BY THESE PHARMACEUTICAL COMPANIES.

09:54AM 14 MR. BALWANI SAW A VERSION AT LEAST OF THE SCHERING-PLOUGH
09:54AM 15 DOCUMENT WITHOUT THAT LOGO. HE DID HAVE THE KNOWLEDGE THAT
09:54AM 16 THOSE INVESTORS NEVER GOT THE BENEFIT OF, THAT A VERSION
09:54AM 17 EXISTED WITHOUT THE LOGO, AND THAT'S WHY THE EVIDENCE SHOULD BE
09:54AM 18 ADMISSIBLE FOR FALSITY AS WELL, AND HE DOES KNOW ABOUT IT
09:54AM 19 DIRECTLY.

09:54AM 20 THANK YOU.

09:54AM 21 THE COURT: THANK YOU.

09:54AM 22 ARE YOU SEEKING THEN -- IS THE GOVERNMENT GOING TO SEEK,
09:54AM 23 TO THE EXTENT THAT YOU CAN TELL US, TO ADMIT ALL OF THE
09:55AM 24 DOCUMENTS, THE ALTERED DOCUMENTS? I THINK THERE WERE TWO OF
09:55AM 25 THEM, WERE THERE?

09:55AM 1 MS. VOLKAR: I BELIEVE THERE WERE THREE, YOUR HONOR,
09:55AM 2 BUT WE DIDN'T -- I DON'T THINK -- THE THIRD ONE DID NOT COME
09:55AM 3 INTO PLAY UNTIL MS. HOLMES WAS TESTIFYING.

09:55AM 4 SO I BELIEVE THE GOVERNMENT WOULD BE SEEKING -- WE DID
09:55AM 5 COMMIT TO NOT REFERENCING IT IN THE OPENING STATEMENT, BUT I DO
09:55AM 6 BELIEVE WE WOULD BE SEEKING TO ADMIT THE TWO ALTERED REPORTS WE
09:55AM 7 DID LAST TIME, WHICH WAS PFIZER AND SCHERING-PLOUGH, AND IT'S
09:55AM 8 RELATED TO THOSE TWO PHARMACEUTICAL COMPANIES.

09:55AM 9 THE COURT: I SEE. OKAY.

09:55AM 10 SO YOUR COLLEAGUE OPPOSITE'S POSITION IS, WELL -- AND HE
09:55AM 11 MAY SAY, AND I'M GOING TO TURN TO HIM IN A MOMENT -- WELL,
09:55AM 12 THAT'S ALL FINE AND GOOD, BUT IT STILL CAUSES EXTREME
09:55AM 13 SPECULATION. IT WOULD STILL CAUSE EXTREME SPECULATION BY THE
09:55AM 14 JURY. AND THAT'S SOMETHING THAT I THINK HE SAID WHEN HE TOLD
09:55AM 15 US IT WOULD BE INHERENTLY UNFAIR TO HIS CLIENT.

09:56AM 16 WHAT IS YOUR COMMENT TO THAT?

09:56AM 17 MS. VOLKAR: THANK YOU, YOUR HONOR.

09:56AM 18 I THINK IT'S NO MORE SPECULATION THAN THE JURY WAS
09:56AM 19 PERMITTED IN THE LAST CASE.

09:56AM 20 AND THE ONE NEW FACT, AS MY COLLEAGUE PUTS IT, IS
09:56AM 21 MS. HOLMES'S TESTIMONY.

09:56AM 22 BUT CONTRARY TO WHAT HE SAID, THE GOVERNMENT IS NOT, AND
09:56AM 23 THE COURT IS NOT, BOUND TO BELIEVE THE TRUTH OF MS. HOLMES'S
09:56AM 24 TESTIMONY.

09:56AM 25 IN FACT, THE JURY IS INSTRUCTED YOU CAN BELIEVE ALL, PART,

09:56AM 1 OR NONE OF A PERSON'S TESTIMONY.

09:56AM 2 AND FROM THE SAME -- I'M ASSUMING MY COLLEAGUE IS
09:56AM 3 REFERRING TO THE NEWS REPORT -- FROM THE SAME REPORTS THAT
09:56AM 4 JURORS GAVE TO NEWS AND MEDIA OUTLETS, THEY RANKED MS. HOLMES'S
09:56AM 5 CREDIBILITY VERY LOW.

09:56AM 6 I DIGRESS A LITTLE BIT HERE, BUT WHAT I'M TRYING TO SAY IS
09:56AM 7 EVEN THOUGH SHE SAID, I DID IT, AND DIDN'T SAY, WE DID IT, OR I
09:56AM 8 DID IT IN CONSULTATION WITH MR. BALWANI, THE GOVERNMENT IS NOT
09:56AM 9 BOUND TO THAT VERSION.

09:56AM 10 AND THE QUESTIONS WEREN'T ASKED WHETHER SHE DISCUSSED THIS
09:56AM 11 DECISION WITH MR. BALWANI OR WHETHER SHE WAS DIRECTED TO DO SO.

09:57AM 12 WE ALSO KNOW THAT SHE TESTIFIED EVERYTHING SHE DID AT THE
09:57AM 13 COMPANY WAS INFLUENCED BY HIM.

09:57AM 14 SO WHAT I'M SAYING IS THAT MY COLLEAGUE WANTS TO PICK AND
09:57AM 15 CHOOSE CERTAIN PORTIONS OF HER TESTIMONY, BUT WE ARE ALSO --
09:57AM 16 BUT WE, THE GOVERNMENT, ARE ALSO NOT BOUND TO TAKE THAT AS THE
09:57AM 17 GOSPEL TRUTH.

09:57AM 18 AND ALSO, EVEN IF WE WERE TO ACCEPT THE TRUTH OF HER
09:57AM 19 TESTIMONY, IT DOESN'T, IT DOESN'T ELIMINATE ANY POSSIBLE
09:57AM 20 JOINING OR -- PARDON ME, YOUR HONOR. IT DOESN'T EXCUSE ANY
09:57AM 21 POSSIBLE INVOLVEMENT OF MR. BALWANI IN THESE ACTS.

09:57AM 22 AND THESE ACTS DID HAPPEN, AGAIN, IF WE WERE TO BELIEVE
09:57AM 23 MS. HOLMES'S TESTIMONY, IN APRIL 2010 BETWEEN THAT WAL-MART
09:57AM 24 EMAIL IN MARCH 2010 AND THE WALGREENS AND SAFEWAY EMAIL IN
09:57AM 25 APRIL OF 2010. MR. BALWANI IS THERE, HE'S ON THESE EMAILS,

09:57AM 1 HE'S ROMANTICALLY INVOLVED WITH HER, HE'S GOT MONEY ON THE
09:57AM 2 LINE, AND HE IS COO OF THERANOS, A COMPANY THAT HE HAS JOINED
09:58AM 3 AND COMMITTED TO MAKING THE BEST COMPANY HE CAN, AND THAT'S
09:58AM 4 MOTIVE, YOUR HONOR.

09:58AM 5 SO I DO THINK THAT IT'S NOT UNDUE SPECULATION TO GIVE
09:58AM 6 THESE FACTS TO THE JURY AND SAY THAT BASED ON THESE FACTS HE
09:58AM 7 PROBABLY DID KNOW.

09:58AM 8 WE HEARD SEVERAL POTENTIAL JURORS EARLIER THIS WEEK TALK
09:58AM 9 ABOUT HOW CLOSELY COO'S AND CEO'S OF STARTUPS WORK TOGETHER,
09:58AM 10 AND ESPECIALLY WHEN THEY'RE ROMANTICALLY INVOLVED.

09:58AM 11 AND I ONLY SAY THAT TO SAY THAT WE, THE GOVERNMENT,
09:58AM 12 CONTINUE TO BELIEVE THAT THESE TWO WORKED TOGETHER ON
09:58AM 13 EVERYTHING. AND I THINK THERE ARE SEVERAL WITNESSES WHO HAVE
09:58AM 14 TALKED AND SPOKEN TO THAT EFFECT AND TESTIFIED TO THAT EFFECT,
09:58AM 15 THAT MS. HOLMES AND MR. BALWANI DISCUSSED EVERYTHING.

09:58AM 16 SO I DON'T THINK THAT IT'S UNDUE SPECULATION TO ASK THE
09:58AM 17 JURY THAT, EVEN IF HE WASN'T INVOLVED WITH THE PHARMACEUTICAL
09:58AM 18 RELATIONSHIPS, THAT HE MAY HAVE LEARNED FROM MS. HOLMES OR
09:58AM 19 AGAIN, AT THE VERY LEAST, HE SAW UNALTERED VERSIONS, HE SAW
09:58AM 20 ALTERED VERSIONS.

09:58AM 21 WHICH DID HE CHOOSE TO USE WHEN HE TRIED TO GET HUNDREDS
09:59AM 22 OF MILLIONS OF DOLLARS? HE USED THE ALTERED VERSIONS.

09:59AM 23 THE COURT: OKAY. I'M GOING TO ASK YOUR COLLEAGUE
09:59AM 24 OPPOSITE IF THAT, WHAT YOU JUST SAID, WOULD BE ADMISSIBLE.

09:59AM 25 BUT I'M ALSO CURIOUS, IS THERE ANY LIMITATION THAT YOU

09:59AM 1 BELIEVE THE COURT SHOULD PUT ON THE ADMISSION OF ANY OF THIS
09:59AM 2 EVIDENCE?

09:59AM 3 YOU HEARD US TALK IN THE HOLMES TRIAL MANY TIMES, THIS
09:59AM 4 ONLY GOES TO KNOWLEDGE, THIS ONLY GOES TO INTENT, THIS ONLY
09:59AM 5 GOES TOWARDS WHATEVER IT IS.

09:59AM 6 ARE THERE LIMITING INSTRUCTIONS THAT YOU THINK WOULD
09:59AM 7 APPLY?

09:59AM 8 MS. VOLKAR: THE GOVERNMENT'S POSITION IS NO.

09:59AM 9 BUT OF COURSE IT DOES DEPEND ON YOUR HONOR'S RULING, AND
09:59AM 10 THAT'S BECAUSE WE DO THING THAT IT GOES TO BOTH KNOWLEDGE AND
09:59AM 11 FALSITY.

09:59AM 12 IF YOUR HONOR BUYS ANY PART OF THE DEFENSE'S ARGUMENT --
09:59AM 13 I'M SORRY TO SAY IT THAT WAY, BUT IF YOUR HONOR AGREES WITH THE
09:59AM 14 DEFENSE IN THAT WAY THAT, FOR EXAMPLE, PHILLIPS WORKS, OR
09:59AM 15 DISAGREES WITH THE CONCEPT -- I HATE TO SAY THIS BUT DISAGREES
10:00AM 16 WITH THE CONCEPT OF VICARIOUS LIABILITY, THEN I GUESS IT COULD
10:00AM 17 BE A LIMITING INSTRUCTION THAT THIS EVIDENCE IS ONLY FOR THE
10:00AM 18 PURPOSE OF FALSITY.

10:00AM 19 BUT THERE'S STILL, AS I SEE IT, AS THE GOVERNMENT SEES IT,
10:00AM 20 I HAVE NOT HEARD ANY REASON TO BAR THIS EVIDENCE ENTIRELY,
10:00AM 21 AGAIN, EXCEPT FOR RULE 403.

10:00AM 22 BUT I THINK WE ALL AGREE THIS IS HIGHLY RELEVANT EVIDENCE,
10:00AM 23 AND, AGAIN, I DISAGREE WITH THE PREMISE THAT MR. BALWANI HAD NO
10:00AM 24 POSSIBLE KNOWLEDGE OF THE ALTERATION.

10:00AM 25 THERE MAY BE A LIMITING INSTRUCTION THAT MR. BALWANI WAS

1 NOT AT THE COMPANY DURING THE TIME PERIOD IT WORKED WITH THE
2 PHARMACEUTICAL COMPANIES. LIKE, I CAN SEE SOME LIMITATION OF
3 CONDUCT BEFORE 2009 OR REALLY BEFORE 2010 WHEN THE INDICTMENT
4 ALLEGES THE CONSPIRACY BEGAN. THERE IS A WORLD IN WHICH
5 PRECONSPIRACY CONDUCT SHOULD NOT BE CONSIDERED AGAINST HIM, AND
6 THAT'S PARTICULARLY IMPORTANT IF WE'RE IN THE WORLD OF
7 VICARIOUS LIABILITY.

8 THANK YOU.

9 THE COURT: THANK YOU.

10 MR. BRECHER: THANK YOU. I APPRECIATE THE
11 OPPORTUNITY TO RESPOND.

12 FIRST, I DID HEAR MY COLLEAGUE SAY, TWO-THIRDS OF THE WAY
13 THROUGH HER REMARKS, ACKNOWLEDGE THAT MR. BALWANI ONLY EVER
14 RECEIVED WHAT WE'LL CALL THE "UNALTERED" VERSION OF THE
15 SCHERING-PLOUGH REPORT.

16 BUT I COUNTED SIX TIMES IN WHICH THE REPRESENTATION WAS
17 MADE THAT HE HAD UNALTERED VERSIONS, HE HAD ALTERED VERSIONS.

18 AS TO PFIZER AND GSK, SIMPLY NOT TRUE. MR. BALWANI NEVER
19 SAW, NEVER POSSESSED THE UNALTERED VERSIONS, AND THE GOVERNMENT
20 HAS NO EVIDENCE OF ANY KIND TO THE CONTRARY. SO LET'S BE VERY
21 CLEAR ABOUT THAT.

22 SECOND, I HOPE THAT I DID NOT SUGGEST THAT I DISAGREED
23 WITH THE CONCEPT OF VICARIOUS LIABILITY. I BELIEVE WHAT OUR
24 PAPERS AND MY ARGUMENT TODAY SAID IS THAT THE GOVERNMENT IS
25 REQUIRED TO MAKE A SHOWING BEFORE IT CAN INTRODUCE THAT

1 EVIDENCE, AND IT IS. AND THAT SHOWING HAS TO BE CONSIDERED ON
2 A PREPONDERANCE STANDARD. THEY HAVE TO MEET THAT BURDEN, AND I
3 DON'T THINK THAT THEY CAN.

4 BUT LET'S SHIFT GEARS BACK TO THE ISSUE OF MR. BALWANI'S
5 PERSONAL KNOWLEDGE.

6 IF MR. BALWANI ONLY EVER HAS THE ALTERED PFIZER AND GSK
7 REPORTS, THEN THOSE ARE GOING TO BE THE ONLY REPORTS THAT HE'S
8 EVER GOING TO SEND TO INVESTORS.

9 AND AS FOR SCHERING-PLOUGH, I DON'T BELIEVE, AND I DON'T
10 BELIEVE THE GOVERNMENT SERIOUSLY BELIEVES, THAT RECEIVING THAT
11 IN MARCH -- OR MARCH 19TH, 2010, AND THEN SEEING -- AGAIN,
12 BEING COPIED ON AN EMAIL IN APRIL, A MONTH LATER, MEANS THAT HE
13 HAD ACTUAL KNOWLEDGE OR EVEN CONSTRUCTIVE KNOWLEDGE.

14 AND I THINK ONE OF THE REASONS THAT GOES TO THAT IS THAT
15 THERE WAS NO RESPONSE TO THE GOVERNMENT'S OWN, THE GOVERNMENT'S
16 OWN ILLUSTRATIONS IN MR. SCHENK'S CLOSING OR IN ITS OWN
17 BRIEFING.

18 I'M NOT ACCUSING THE GOVERNMENT OF ANYTHING, YOUR HONOR,
19 BUT DID THE GOVERNMENT TRY TO MISLEAD THIS COURT ABOUT THE
20 METADATA ISSUE, ABOUT THE DATE? OF COURSE NOT. IT'S A SIMPLE
21 MISTAKE. BUT BEAR IN MIND THE CONTEXT OF THAT SIMPLE MISTAKE.

22 THEY LOOKED AT THIS TINY STRING OF TEXTS. THEY RELIED ON
23 IT, THEY EXAMINED IT CLOSELY, AND THEY WROTE A BRIEF THAT THEY
24 SUBMITTED TO YOU, AND THEY MADE SEVERAL ASSERTIONS OF FACT THAT
25 TURNED OUT TO BE UNTRUE.

10:03AM 1 AND, YET, THAT'S PERFECTLY INNOCENT?

10:03AM 2 BUT MR. BALWANI SHOULD BE EXPECTED, BY ANY REASONABLE
10:03AM 3 MIND, TO HAVE PUT THE MISSING LOGO TOGETHER, TO HAVE DRAWN SOME
10:03AM 4 INFERENCE FROM THAT? I THINK THAT THAT'S JUST ABSURD,
10:03AM 5 YOUR HONOR.

10:03AM 6 AND I WANT TO MOVE ON.

10:03AM 7 THE REST OF THE EVIDENCE IS ABOUT EVENTS IN 2013, 2014,
10:03AM 8 2015. ALL I HEAR IS THAT THEY'RE TEXTING EXTENSIVELY ABOUT THE
10:03AM 9 COMPANY.

10:03AM 10 WELL, YEAH, IT'S THE CEO AND THE COO.

10:03AM 11 BUT AS YOUR HONOR'S OWN JURY INSTRUCTION, I THINK IT'S
10:03AM 12 FINAL INSTRUCTION 16 IN THE HOLMES CASE POINTS OUT, THAT'S NOT
10:03AM 13 ENOUGH. THAT'S NOT ENOUGH FOR THIS COURT TO MAKE ITS THRESHOLD
10:03AM 14 SHOWING.

10:03AM 15 OH, THE ISSUE OF WHAT COULD OR COULD NOT COME INTO THE
10:04AM 16 HOLMES TRIAL, I THINK IT'S, FRANKLY, A STRANGE ARGUMENT BECAUSE
10:04AM 17 AS BOTH SIDES REPEATEDLY ACKNOWLEDGED IN THEIR BRIEFING, WHAT
10:04AM 18 HAPPENED IN THE HOLMES TRIAL DOESN'T BIND US HERE.

10:04AM 19 BUT HERE IT'S NOT SOME ACADEMIC POINT ABOUT THE LAW OF THE
10:04AM 20 CASE WHERE YOUR HONOR HAS PASSED ON THE QUESTION AND WE'RE
10:04AM 21 ASKING YOU TO PLEASE RECONSIDER IT.

10:04AM 22 MS. HOLMES NEVER MOVED FOR THIS RELIEF, AND SO THE COURT
10:04AM 23 IS WRITING ON A COMPLETE BLANK SLATE.

10:04AM 24 THE OTHER ISSUE, YOUR HONOR, IS OF COURSE THE GOVERNMENT
10:04AM 25 KNEW GOING INTO THE HOLMES TRIAL THAT SHE WAS INTIMATELY

1 INVOLVED AND MANAGED THE PHARMACEUTICAL RELATIONSHIPS. INDEED,
2 MR. BALWANI WASN'T EVEN AT THE COMPANY WHILE WHEN THESE EVENTS
3 WERE GOING ON. IT'S A VERY DIFFERENT CONTEXT HERE.

4 AND AS FOR THE NOTION -- SO I THINK WHAT THEY WERE
5 PLANNING TO DO IN THE HOLMES TRIAL WAS PERFECTLY FAIR, AND I
6 THINK I SAID THAT IN MY OPENING REMARKS TODAY.

7 BUT THINGS CHANGE. IF I'M A PROSECUTOR AND I DON'T HAVE
8 ANY EXCULPATORY EVIDENCE IN MY POSSESSION, THEN I'VE DISCHARGED
9 MY BRADY OBLIGATIONS. I DON'T HAVE ANYTHING TO DISCLOSE.

10 BUT IF LATER I DO, WELL, NOW I HAVE SOMETHING TO DISCLOSE.
11 NOW WE KNOW A NEW FACT, AND WITHOUT KNOWLEDGE OF THAT NEW FACT,
12 WHICH THE JURY CANNOT HEAR WITHOUT SOME SACRIFICE OF
13 MR. BALWANI'S CONSTITUTIONAL RIGHTS, IT RISKS SEVERE AND
14 UNWARRANTED PREJUDICE, BECAUSE THE ONLY NATURAL CONCLUSION THAT
15 THEY'RE GOING TO DRAW IS LOOK AT WHO IS ON THE DOCS. IT'S JUST
16 HIM.

17 MS. HOLMES IS NOT HERE, AND BARRING SOMETHING SURPRISING,
18 I DON'T THINK WE'RE GOING TO HEAR FROM HER, AND I DON'T THINK
19 MR. BALWANI IS GOING TO HAVE A CHANCE TO QUESTION HER TO ASK
20 THAT FOLLOW-UP QUESTION, AND IT'S PRECISELY THAT ABSENCE OF
21 OPPORTUNITY THAT MAKES THIS ALL SO UNFAIR.

22 AGAIN, YOUR HONOR, I'M HAPPY TO ANSWER ANY OF THE COURT'S
23 QUESTIONS, BUT I THINK THAT I'LL LEAVE IT THERE AND ON OUR
24 PAPERS, UNLESS YOUR HONOR HAS QUESTIONS.

25 THE COURT: YOU HEARD ME ASK MS. VOLKAR ABOUT

10:05AM 1 LIMITING INSTRUCTIONS. PERHAPS THERE WAS SOME CONVERSATION
10:05AM 2 ABOUT THAT.

10:05AM 3 IS THERE ANY LIMITING INSTRUCTION OR ADMONITION TO ANY
10:06AM 4 ADMONITION OF SOME OF THIS EVIDENCE THAT YOU THINK WOULD ASSIST
10:06AM 5 THE JURY IN NOT TAKING AN UNTOWARD OR INAPPROPRIATE REACTION TO
10:06AM 6 THE EVIDENCE?

10:06AM 7 MR. BRECHER: IT'S AN INTERESTING QUESTION,
10:06AM 8 YOUR HONOR.

10:06AM 9 THE COURT: THANK YOU.

10:06AM 10 MR. BRECHER: I'M TROUBLED TO THINK OF ONE OFFHAND
10:06AM 11 THAT WOULD CURE THE ISSUE.

10:06AM 12 I THINK PART OF THE PROBLEM IS THAT THE PARTIES ARE NOT
10:06AM 13 GOING TO COME TO A PLACE OF ALIGNMENT, RIGHT?

10:06AM 14 WE MIGHT IMAGINE AN INSTRUCTION THAT SAYS SOMETHING LIKE,
10:06AM 15 THIS EVIDENCE IS ONLY ADMISSIBLE FOR FALSITY. YOU CAN CONSIDER
10:06AM 16 WHETHER IN FACT THE PHARMACEUTICAL COMPANIES AUTHORIZED THIS,
10:06AM 17 BUT YOU CAN'T CONSIDER IT FOR MR. BALWANI'S INTENT.

10:06AM 18 I DON'T THINK THE GOVERNMENT WOULD LIKE THAT VERY MUCH,
10:06AM 19 AND FRANKLY, I DON'T THINK IT WOULD SOLVE -- WHILE IT WOULD BE
10:06AM 20 SOMEWHAT HELPFUL, I DON'T THINK IT WOULD SOLVE OUR CONCERNS
10:06AM 21 BECAUSE, AGAIN, THE NARROW ISSUE THAT WE'RE FOCUSSED ON, AND IT
10:06AM 22 REALLY IS THAT TIGHT ISSUE, IS THE ACT OF ALTERING, DOCTORING,
10:07AM 23 ENHANCING, WHATEVER YOUR HONOR 'S PREFERRED TERM, IN APRIL OF
10:07AM 24 2010.

10:07AM 25 AND SHOWING THAT THERE IS A CONSPIRACY OR COULD BE A

1 CONSPIRACY OR MAYBE WAS A CONSPIRACY OR A SCHEME IN 2013 OR
2 2014, THAT CAN'T GO BACK IN TIME TO 2010 BECAUSE -- AND THE
3 GOVERNMENT ABSOLUTELY RECITES THIS ACCURATELY IN THEIR BRIEF,
4 THEY JUST DON'T APPLY IT ACCURATELY -- ACTS OF COSCHEMERS OR
5 COCONSPIRATORS HAVE TO BE DONE NOT ONLY IN FURTHERANCE OF THE
6 SCHEME OR CONSPIRACY, BUT DURING THE COURSE OF THE SCHEME OR
7 CONSPIRACY.

8 UNDER THE GOVERNMENT'S THEORY, THAT DURATIONAL
9 REQUIREMENT, THAT TEMPORAL RESTRICTION WOULD BE COMPLETELY
10 MEANINGLESS, AND NOW YOU'RE GOING TO HAVE A RANGE OF TRIALS IN
11 WHICH THE GOVERNMENT IS GOING TO TALK ABOUT ALLEGED MISCONDUCT
12 OF ABSENT PARTIES AND ABSENT WITNESSES AND SAYING, YEAH, THE
13 DEFENDANT IS PROBABLY RESPONSIBLE FOR IT.

14 I DON'T THINK THAT THAT CAN STAND, YOUR HONOR. I THINK
15 THAT OUR NARROW RESTRICTION IS NECESSARY HERE.

16 THE COURT: SO LET ME JUST REVIEW. SO YOU'VE TOLD
17 ME THAT THE ALTERED DOCUMENTS MIGHT BE ADMISSIBLE IN THE CASE.
18 YOU SAID THAT YOU COULD SEE THAT THAT WOULD BE IMPORTANT TO THE
19 GOVERNMENT AND THEY WOULD BE ADMISSIBLE TO SHOW THE JURY,
20 HERE'S WHAT INVESTORS RECEIVED, OR THE INVESTORS MAY TESTIFY,
21 YES, THIS IS WHAT I RECEIVED.

22 YOU HAVE NO QUARREL WITH THAT?

23 MR. BRECHER: NONE WHATSOEVER, YOUR HONOR.

24 I THINK AS LONG AS THERE'S NOTHING FROM WHICH THE JURY
25 COULD INAPPROPRIATELY INFER THAT THERE WAS SOME ALTERATION OR

10:08AM 1 CHANGE, AGAIN, THE SORT OF SOLUTION THAT I'M THINKING OF IN MY
10:08AM 2 HEAD IS SOME KIND OF REDACTION EXERCISE, BUT I'M NOT WEDDED TO
10:08AM 3 THAT.

10:08AM 4 THE COURT: PARDON ME, I'M JUST NOT FOLLOWING THAT.

10:08AM 5 MR. BRECHER: OH.

10:08AM 6 THE COURT: SO THE JURY COULD RECEIVE THE UNALTERED
10:08AM 7 AND THE ALTERED? DO YOU HAVE ANY PROBLEM WITH THAT?

10:08AM 8 MR. BRECHER: OH -- I DO.

10:08AM 9 I WANT TO MAKE SURE I'M TRACKING THE COURT'S QUESTION, SO
10:08AM 10 MAYBE I SHOULD BACK UP.

10:08AM 11 THE COURT: SURE.

10:08AM 12 MR. BRECHER: THE WITNESSES LIKE MR. WEBER AND
10:09AM 13 MS. CULLEN, THEIR ROLES, THEIR PERSONAL KNOWLEDGE, AND IT
10:09AM 14 ENDS -- IN MR. WEBER'S CASE I THINK IT IS LATE 2008 TO EARLY
10:09AM 15 JANUARY OF 2009, AND IN MS. CULLEN'S CASE IT'S LATE 2009. SO
10:09AM 16 THEY'RE NOT GOING FORWARD IN TIME.

10:09AM 17 CERTAINLY THE GOVERNMENT CAN SHOW THE WITNESSES THE
10:09AM 18 REPORTS THAT WERE PREPARED BY THERANOS ABOUT THOSE
10:09AM 19 PARTNERSHIPS.

10:09AM 20 THE COURT: AND THEY WOULD SAY, YES, THIS IS -- THEY
10:09AM 21 TIME STAMPED THOSE REPORTS.

10:09AM 22 MR. BRECHER: AND SAY, NO, WE DIDN'T COMPREHENSIVELY
10:09AM 23 VALIDATE; NO, WE NEVER COMMUNICATED THAT TO THE COMPANY.

10:09AM 24 PERFECTLY FINE. I HAVE NO OBJECTION TO IT WHATSOEVER.

10:09AM 25 SECOND, IN THE LATER PERIOD, THAT 2013/2014 PERIOD WHERE

10:09AM 1 THE ENHANCED VERSIONS OF THE REPORTS ARE BEING SENT TO
10:09AM 2 INVESTORS, THAT INVESTORS RECEIVE THESE REPORTS AND WHETHER
10:09AM 3 THAT -- THOSE RELATIONSHIPS AND THOSE REPRESENTATIONS WERE
10:09AM 4 MATERIAL, TOTALLY FAIR GAME.

10:09AM 5 WHETHER THOSE REPRESENTATIONS WERE FALSE, AGAIN, TOTALLY
10:10AM 6 FAIR GAME.

10:10AM 7 WHAT I'M SUGGESTING ABOUT A REDACTION EXERCISE IS WHAT I
10:10AM 8 DON'T WANT THE JURY TO BE ALLOWED TO SEE IS EVEN IF THERE'S NO
10:10AM 9 EXPLICIT ARGUMENT, THE JURY CAN'T SEE TWO DIFFERENT VERSIONS
10:10AM 10 AND SAY, OH, THEY DOCTORED IT UP, THEY COOKED IT UP. RIGHT?

10:10AM 11 AND I THINK AN EASY SOLUTION TO THAT WOULD BE, IF THE
10:10AM 12 GOVERNMENT PREFERS, TO STRIP AWAY THE PHARMACEUTICAL LOGO, OR
10:10AM 13 IF THE COURT THINKS IT WANTS TO BE MORE EVENHANDED, STRIP AWAY
10:10AM 14 BOTH LOGOS. I'M COMPLETELY INDIFFERENT ON THAT POINT,
10:10AM 15 YOUR HONOR.

10:10AM 16 I'M PERFECTLY FINE WITH THE JURY SEEING THE REPORTS
10:10AM 17 KNOWING THAT THE PHARMACEUTICAL WITNESSES WILL SAY, NO, I DON'T
10:10AM 18 THINK THAT THAT REFLECTS OUR VIEWS; AND KNOWING THAT THE
10:10AM 19 INVESTORS SAID, YEAH, I THOUGHT THEY HAD BEEN COMPREHENSIVELY
10:10AM 20 VALIDATED, THIS GAVE ME GREAT CONFIDENCE.

10:10AM 21 THAT IS FODDER FOR CROSS-EXAMINATION. THAT IS FODDER FOR
10:10AM 22 TRIAL. I WOULD NOT BE HERE TRYING TO KEEP THAT OUT.

10:10AM 23 THAT WOULD BE THE LIAR, LIAR TACTIC, YOU KNOW, IT'S BAD
10:11AM 24 FOR MY CASE SO I WANT YOU TO KEEP IT OUT.

10:11AM 25 WHAT I DO WANT KEPT OUT, YOUR HONOR, IS THE EVIDENCE OF

10:11AM 1 DOCTORING, THAT NARROW, NARROW CATEGORY OF EVIDENCE, THOSE
10:11AM 2 CHANGES THAT WERE MADE IN APRIL OF 2010, BECAUSE THERE'S NO
10:11AM 3 TETHER TO MR. BALWANI.

10:11AM 4 THE COURT: SO YOU HAVE NO QUARREL WITH THE
10:11AM 5 ORIGINAL, BUT YOU DON'T WANT THE, THE ALTERED DOCUMENT?

10:11AM 6 MR. BRECHER: I DON'T WANT THE ALTERED DOCUMENT IN A
10:11AM 7 WAY THAT WOULD REFLECT THAT IT'S ALTERED. I'M PERFECTLY
10:11AM 8 FINE --

10:11AM 9 THE COURT: HOW DO WE DO THAT?

10:11AM 10 MR. BRECHER: OH, WELL, THROUGH WHAT I SUGGESTED
10:11AM 11 WOULD BE ONE WAY, YOUR HONOR, THROUGH REDACTING THE LOGOS.

10:11AM 12 THE COURT: I SEE. OKAY.

10:11AM 13 MR. BRECHER: RIGHT?

10:11AM 14 THE COURT: SURE.

10:11AM 15 MR. BRECHER: SOME UNIFORM VERSION OF THE DOCUMENT.

10:11AM 16 AM I CLEAR ON THAT, YOUR HONOR?

10:11AM 17 THE COURT: I THINK YOU ARE.

10:11AM 18 LET ME ASK MS. VOLKAR IF SHE IS.

10:11AM 19 MS. VOLKAR: I THINK MY COLLEAGUE'S COMMENTS FURTHER
10:11AM 20 SHOWS WHY AN ORDER ON THIS POINT WOULD BE UNNECESSARY.

10:11AM 21 ESSENTIALLY WHAT HE'S ASKING FOR IS THE GOVERNMENT NOT TO PUT
10:11AM 22 THE TWO, THE UNALTERED AND ALTERED DOCUMENT NEXT TO EACH OTHER
10:11AM 23 AS WE DID, AND I AGAIN JUST SIMPLY CANNOT SEE ANY BASIS, ANY
10:12AM 24 LEGAL BASIS FOR EXCLUDING THE GOVERNMENT FROM MAKING THAT
10:12AM 25 POINT, THAT THIS IS WHAT THE PHARMACEUTICAL THAT MR. WEBER AND

1 DR. CULLEN RECEIVED, AND THIS IS WHAT INVESTORS RECEIVED.

2 IF WE'RE SAYING THAT THOSE TWO THINGS ARE ADMISSIBLE, I'M
3 REALLY NOT SEEING WHY THE GOVERNMENT'S HANDS SHOULD BE TIED TO
4 NOT PUT THEM SIDE BY SIDE TO SHOW, FOR EXAMPLE, FALSITY,
5 FALSITY IN TERMS OF WHAT WAS TOLD TO THE INVESTORS.

6 THE COURT: WELL, THAT'S WHAT I'M TRYING -- I'M
7 SORRY TO INTERRUPT YOU, MS. VOLKAR, BUT THAT'S WHAT I'M TRYING
8 TO UNDERSTAND, IS EVIDENCE WILL SHOW THAT THESE TWO
9 INDIVIDUALS, THEY'LL TALK ABOUT WHAT THEIR COMPANIES DID OR
10 DIDN'T DO, AND THEN INVESTORS WILL BE SHOWN A DIFFERENT, IS
11 THIS WHAT YOU RECEIVED? YES, NO.

12 DID YOU TAKE ACTION BASED ON THIS? WAS IT MATERIAL TO
13 YOUR DECISION. YES, NO.

14 ISN'T THAT OKAY?

15 MR. BRECHER: YES.

16 AND I APOLOGIZE, YOUR HONOR, APPARENTLY I'VE BEEN UNCLEAR.
17 YES, THAT IS FINE.

18 THE ISSUE IS PRECISELY WHAT MS. VOLKAR ARTICULATED, IT'S
19 THE SIDE-BY-SIDE COMPARISON.

20 THE COURT: AND SO IS IT JUST THE VISUAL YOU DON'T
21 WANT?

22 MR. BRECHER: NO, IT'S NOT THE VISUAL. IF THE COURT
23 IS SATISFIED -- ANOTHER ALTERNATIVE WOULD BE ONLY TO ADMIT THE
24 ALTERED VERSION, OR ONLY TO ADMIT THE UNALTERED VERSION. I'M
25 TRULY INDIFFERENT.

1 WHAT GOES TO FALSITY, YOUR HONOR, IS THE SUGGESTION THAT
2 PHARMACEUTICAL COMPANIES HAVE COMPREHENSIVELY VALIDATED THE
3 TECHNOLOGY. THOSE WITNESSES, I EXPECT, IF THEY TESTIFY
4 CONSISTENT TO HOW THEY DID IN THE LAST TRIAL, WILL SAY, NO,
5 THAT'S NOT TRUE.

6 I'M FINE WITH THAT. RIGHT?

7 IT IS THE EXTREMELY DAMNING, NARROW SLIVER OF
8 MS. HOLMES -- AND WE KNOW IT WAS MS. HOLMES GOING IN AND MAKING
9 CHANGES TO BEEF UP THE REPORTS.

10 THE COURT: I SEE. SO YOUR QUARREL IS, WELL, IF
11 THEY SEE THAT, WE KNOW, IF WE BELIEVE MS. HOLMES'S TESTIMONY,
12 SHE DID IT.

13 MR. BRECHER: YES.

14 THE COURT: NOBODY ASKED HER ON DIRECT OR CROSS, DID
15 ANYONE HELP YOU? WHO ELSE HELPED YOU WITH IT?

16 I DON'T RECALL ANY QUESTION LIKE THAT.

17 MR. BRECHER: THERE WERE NO SUCH QUESTIONS,
18 YOUR HONOR.

19 THE COURT: AND SO YOUR --

20 MR. BRECHER: I'M SORRY.

21 THE COURT: AND SO YOUR OBJECTION IS, WELL, IF THE
22 ALTERED IS UP THERE AND THERE'S NO -- EVEN IF THERE'S NO
23 MENTION OF IT IN OUR TRIAL, EVERYONE IS GOING TO LOOK AT MY
24 CLIENT BECAUSE HE'S THE ONLY ONE AT THE DEFENDANT'S TABLE.

25 MR. BRECHER: PRECISELY RIGHT, YOUR HONOR. THAT'S

10:14AM 1 THE 403 ISSUE.

10:14AM 2 THERE'S ALSO, OF COURSE, THE VICARIOUS LIABILITY ISSUE.

10:14AM 3 I'LL SPEAK TO THAT FOR JUST 30 SECONDS.

10:14AM 4 YES, THE COURT IS NOT BOUND BY MS. HOLMES'S TESTIMONY.

10:14AM 5 BUT LET'S NOT KID OURSELVES. THE GOVERNMENT ABSOLUTELY

10:14AM 6 BELIEVED THAT ADMISSION. THEY TRUMPETED IT IN THEIR CLOSING.

10:14AM 7 I THINK, HAD THE COURT PERMITTED IT, MR. SCHENK MIGHT HAVE BEEN

10:14AM 8 WILLING TO SHOUT IT FROM THE ROOFTOPS. THEY LOVED THAT

10:15AM 9 EVIDENCE.

10:15AM 10 WE KNOW THAT'S WHAT THEY SAID. WE KNOW THAT'S AN

10:15AM 11 ADMISSION. WE DIDN'T HAVE A CHANCE TO FOLLOW UP AND GET THE

10:15AM 12 DETAILS.

10:15AM 13 AND OF COURSE THE GOVERNMENT, BECAUSE THEY'RE TRYING OUR

10:15AM 14 DEFENDANT NEXT, DIDN'T HAVE ANY INCENTIVE TO ASK THAT QUESTION.

10:15AM 15 SO THAT'S THE UNFAIRNESS. THAT'S THE 403 ISSUE.

10:15AM 16 AGAIN, IT REALLY IS NARROWLY FOCUSED. I'M COMPLETELY

10:15AM 17 UNINTERESTED IN STOPPING THE GOVERNMENT IN SOME SORT OF BROAD

10:15AM 18 BASED WAY FROM SAYING THAT PHARMACEUTICAL COMPANIES DIDN'T

10:15AM 19 COMPREHENSIVELY VALIDATE THE TECHNOLOGY. WE JUST HAVE TO LIVE

10:15AM 20 WITH THAT AND LIVE ON CROSS-EXAMINATION AND ARGUMENT.

10:15AM 21 THE COURT: OKAY.

10:15AM 22 MR. BRECHER: BUT WHAT THEY CAN'T SAY IS

10:15AM 23 MR. BALWANI, OR MS. HOLMES, OR SOMEONE, ALTERED THESE REPORTS,

10:15AM 24 BECAUSE THEY DON'T SATISFY THE VICARIOUS LIABILITY STANDARD AND

10:15AM 25 THERE'S NO TIE TO MR. BALWANI.

10:15AM 1 THE COURT: I HAVE NOT ASKED MS. VOLKAR IF THAT'S
10:15AM 2 WHAT THE GOVERNMENT INTENDS TO DO, TO SAY HE DID IT BECAUSE OF
10:15AM 3 THEIR RELATIONSHIP.

10:15AM 4 IT SOUNDS LIKE THAT'S WHAT THE INFERENCE WOULD BE AND
10:15AM 5 PERHAPS THE CLOSING ARGUMENT WOULD BE.

10:16AM 6 MS. VOLKAR: YOUR HONOR, WE'LL HAVE TO WAIT AND SEE
10:16AM 7 EXACTLY HOW THE EVIDENCE COMES IN.

10:16AM 8 OF COURSE FOR CLOSING ARGUMENT, I THINK WHAT I WOULD
10:16AM 9 IMAGINE, AND I MAY BE EXTRAPOLATING TOO FAR HERE, IS WE
10:16AM 10 PROBABLY WOULD POINT TO WHAT I DID IN MY BRIEF, WHICH IS THE
10:16AM 11 EMAIL TO WAL-MART THAT WENT NOWHERE, AND THEN THE EMAIL THAT
10:16AM 12 WENT TO WALGREENS AND SAFEWAY AND WENT SOMEWHERE.

10:16AM 13 AND MORE IMPORTANTLY, ONE, I WANT TO SAY THAT BECAUSE THE
10:16AM 14 GOVERNMENT USED THE EVIDENCE THAT WAS IN MS. HOLMES'S TRIAL,
10:16AM 15 THE FACT THAT SHE ADMITTED SHE DID IT IN CLOSING ARGUMENT
10:16AM 16 DOESN'T HELP THEIR 403 ARGUMENT HERE.

10:16AM 17 IF MR. BALWANI TOOK THE STAND AND SAID, I DISCUSSED IT
10:16AM 18 WITH HER, I INSTRUCTED HER TO CHANGE THE LOGOS, WE WOULD ALSO
10:16AM 19 REFERENCE THAT IN OUR CLOSING AND THERE WOULDN'T BE ANY
10:16AM 20 CONTRADICTION BETWEEN THOSE TWO THINGS.

10:16AM 21 BUT MORE IMPORTANTLY THAN THAT, I WANT TO GET BACK TO THE
10:16AM 22 SOLUTION MY COLLEAGUE IS PROPOSING, WHICH IS ONE VERSION OF THE
10:16AM 23 REPORT, SOME WAY WE CAN AGREE ON ONE VERSION OF THE REPORT SO
10:16AM 24 THERE'S NO WAY THAT THE JURY KNOWS THAT THEY WERE ALTERED.

10:16AM 25 PRACTICALLY, HOW DO WE DO THAT, YOUR HONOR? AND I'M NOT

1 TRYING TO BE CUTE HERE, BUT THE PHARMACEUTICAL WITNESSES NEVER
2 SAW THE VERSION WITH THE LOGO.

3 YES, MS. HOLMES SENT BACK TO PFIZER A VERSION WITH THE
4 LOGO IN, LIKE, 2015. BUT AT THE TIME, IN THIS 2010 PERIOD
5 WE'RE TALKING ABOUT, THE PHARMA WITNESSES THAT WE CALLED LAST
6 TIME, MR. WEBER AND DR. CULLEN, AND I EXPECT WE MAY CALL THEM
7 IN THIS TRIAL, THEY NEVER SAW THE VERSION WITH THE LOGO.

8 AND IF WE ARE TO DO AS MY COLLEAGUE SUGGESTS AND STRIP
9 THAT PHARMACEUTICAL LOGO OFF AND SHOW IT TO THE INVESTORS, I
10 WOULD POSIT THAT THEY WOULD EXPRESS SURPRISE.

11 MULTIPLE OF THE WITNESSES, MR. MOSLEY, LISA PETERSON,
12 ALAN EISENMAN ALL SAID THAT THEY KEYED IN ON THOSE LOGOS. THEY
13 FOCUSSED ON THAT. THAT WAS A BIG PORTION OF WHAT WAS
14 CONVINCING TO THEM. THAT WAS PART OF THEIR RELIANCE.

15 SO I'M HAVING A HARD TIME OF ENVISIONING A VERSION OF SOME
16 COMBINED UNALTERED REPORT THAT CAN SATISFY THOSE TWO DIFFERENT
17 WITNESSES.

18 IT SIMPLY IS PART OF THE STORY, YOUR HONOR. IT REALLY IS
19 THE FACT THAT THE ALTERING OF THE PHARMA LOGOS WAS ONE OF THE
20 FALSE MISREPRESENTATIONS.

21 SO THAT BRINGS ME BACK TO FALSITY, AND IF THERE IS A
22 LIMITING INSTRUCTION, PERHAPS IT'S THAT THE JURY CAN ONLY
23 CONSIDER THE ALTERING OF THE LOGOS FOR FALSITY AND NOT
24 KNOWLEDGE.

25 AGAIN, THE GOVERNMENT DISAGREES WITH THAT.

1 AND I GO BACK TO WHERE MY COLLEAGUE STARTED, OR WAS AT A
2 FEW MINUTES AGO, THAT WE HAVE TO SORT OF PROVE BY A
3 PREPONDERANCE OF THE EVIDENCE.

4 I DID NOT SEE A CASE IN THEIR MOTION OR REPLY THAT
5 ACTUALLY REQUIRES THAT.

6 THEY CITE BOURJAILY, WHICH SAYS FOR COCONSPIRATOR
7 STATEMENTS TO GET AROUND HEARSAY UNDER RULE 801(B)(2)(E), THE
8 GOVERNMENT MUST MEET THAT BURDEN.

9 I HAVE NOT YET SEEN A CASE THAT SAYS THAT WE HAVE TO MEET
10 THIS HIGHER BAR. AND, AGAIN, EVEN IF WE DO -- AND PERHAPS I'M
11 JUST UNAWARE OF THE CASE, THEY DIDN'T CITE ONE -- I THINK THAT
12 WE HAVE MET IT HERE FOR ALL OF THE REASONS THAT I SAID EARLIER
13 TODAY.

14 THE COURT: THANK YOU.

15 MR. BRECHER: YOUR HONOR, I HAVE TO RESPOND TO THAT
16 LAST POINT.

17 FIRST, THE GOVERNMENT DOESN'T NEED LOGOS TO PROVE THE
18 FALSITY ELEMENT.

19 AND AS FOR WHAT LATER WITNESSES MIGHT SAY, ONE, PARTIES
20 ROUTINELY INSTRUCT WITNESSES TO GUARD THEMSELVES AROUND THE
21 COURT'S EVIDENTIARY RULINGS. THAT'S A STANDARD NOT ONLY
22 FEATURE AT TRIAL PRACTICE, IT'S A RESPONSIBILITY OF EXAMINING
23 ATTORNEYS.

24 SECOND, GIVEN THE GOVERNMENT'S OWN MIL'S, I DON'T THINK
25 IT'S APPROPRIATE TO TALK ABOUT INDIVIDUAL INVESTOR'S RELIANCE.

10:19AM 1 THAT'S NOT AN ELEMENT THAT THE GOVERNMENT HAS TO PROVE.

10:19AM 2 THE GOVERNMENT TRIED TO STOP THE DEFENDANTS, AND I THINK
10:19AM 3 IT SUCCEEDED IN STOPPING DEFENDANTS, FROM INTRODUCING THAT SORT
10:19AM 4 OF EVIDENCE. THEY SHOULDN'T GET TO INTRODUCE IT WHEN THE SHOE
10:19AM 5 IS ON THE OTHER FOOT.

10:19AM 6 BUT SECOND, AS TO THE PREPONDERANCE STANDARD, BOURJAILY,
10:19AM 7 YES, THAT PARTICULAR CASE AROSE IN THE CONTEXT OF COCONSPIRATOR
10:20AM 8 STATEMENTS, WHICH ARE OF COURSE CONCEPTUALLY CLOSELY ANALOGOUS
10:20AM 9 TO THIS SCENARIO.

10:20AM 10 BUT HERE'S WHAT BOURJAILY HAD TO SAY, "WE ARE THEREFORE
10:20AM 11 GUIDED BY OUR PRIOR DECISIONS REGARDING ADMISSIBILITY
10:20AM 12 DETERMINATIONS THAT HINGE ON PRELIMINARY FACTUAL QUESTIONS. WE
10:20AM 13 HAVE TRADITIONALLY REQUIRED THAT THESE MATTERS BE ESTABLISHED
10:20AM 14 BY A PREPONDERANCE OF PROOF."

10:20AM 15 WHAT BOURJAILY IS SAYING, IN FACT, WHAT BOURJAILY IS
10:20AM 16 REJECTING IS THE CRIMINAL DEFENDANT IN THAT CASE SAID, ONE, YOU
10:20AM 17 CAN'T RELY ON THE HEARSAY STATEMENTS THEMSELVES AS PART OF THAT
10:20AM 18 PRELIMINARY SHOWING, AND THE SUPREME COURT SAID, YES, YOU CAN.

10:20AM 19 AND THEY SAID THERE SHOULD BE A HIGHER STANDARD, SINCE
10:20AM 20 THIS IS A CRIMINAL CASE, THAN PREPONDERANCE, AND THE SUPREME
10:20AM 21 COURT SAID, NO, PREPONDERANCE IS THE STANDARD SHOWING NEEDED AT
10:20AM 22 THAT 104 PRELIMINARY QUESTION GROUND.

10:20AM 23 SO I JUST WANTED TO RESPOND TO THAT BRIEF POINT.

10:20AM 24 OTHER THAN THAT, YOUR HONOR, I KNOW THAT THE COURT HAS
10:20AM 25 GIVEN THIS SUBSTANTIAL ATTENTION AND I APPRECIATE THAT.

10:20AM 1 THE COURT: NO. THANK YOU FOR THE CONVERSATION,
10:20AM 2 BOTH OF YOU.

10:20AM 3 ONE THING THAT YOU DIDN'T TALK ABOUT IS FOUND ON PAGE 2,
10:20AM 4 ECF PAGE 2 OF 1337, AND THE TIMELINESS OF THE MOTION.

10:21AM 5 I THINK THE REPLY WAS FILED YESTERDAY, I BELIEVE IT WAS.

10:21AM 6 MR. BRECHER: YES.

10:21AM 7 THE COURT: WITH GREAT CONFIDENCE HE SAYS, YES, IT
10:21AM 8 WAS.

10:21AM 9 MR. BRECHER: I'M HAPPY TO SPEAK TO THAT.

10:21AM 10 THE COURT: NO, NO.

10:21AM 11 WE RECEIVED THAT, AND THEN IN A FOOTNOTE ON THE PAGE THAT
10:21AM 12 I JUST MENTIONED, FOOTNOTE 1 INDICATES THE GOVERNMENT, AS WE
10:21AM 13 KNOW, COMMITS NOT TO MENTION THIS, AND I APPRECIATE THAT. THAT
10:21AM 14 TAKES SOME TIME PRESSURE OFF OF THE COURT AS TO WHEN IT WILL
10:21AM 15 LET YOU KNOW, BY ORDER OR OTHERWISE, THE DECISION AS TO THIS
10:21AM 16 MOTION.

10:21AM 17 IT SOUNDS LIKE -- LET ME JUST SAY, WHEN I LOOKED AT THIS
10:21AM 18 MOTION, IN THE SPIRIT OF FULL DISCLOSURE, I SAID, IS THIS ONE
10:21AM 19 OF, LOOKING AT OUR, AT THE MIL ORDERS -- YOU KNOW, I USE THIS
10:21AM 20 PHRASE OFTEN IN THOSE, AS YOU KNOW -- IS THIS SOMETHING THAT
10:21AM 21 SHOULD BE DEFERRED UNTIL THERE'S A FOUNDATION OR WHAT?

10:21AM 22 AND THEN MY CONCERN WAS, WELL, THAT'S NOT FAIR TO THE
10:22AM 23 PARTIES BECAUSE THEY WANT TO TELL THE JURY IN THEIR OPENING
10:22AM 24 STATEMENTS WHAT THEY CAN EXPECT TO HEAR.

10:22AM 25 AND THE TIMING OF THIS CAUSED ME SOME CONCERN. THE

1 GOVERNMENT SAID, WE'RE NOT GOING TO TALK ABOUT THIS IN OUR
2 OPENING, AND I APPRECIATE THAT. THAT GIVES THE COURT A LITTLE
3 BIT OF LATITUDE.

4 IT GIVES YOU SOME LATITUDE AS WELL FROM YOUR TEAMS, I
5 THINK.

6 MR. BRECHER: WELL, YOUR HONOR, THIS KILLS ME TO
7 SAY, AND MS. VOLKAR CAN CORRECT ME IF I'M MISTAKEN, BUT I DON'T
8 KNOW HOW MUCH LATITUDE THERE IS.

9 AGAIN, THE GOVERNMENT CAN CORRECT ME, BUT MY UNDERSTANDING
10 BASED, ON RECENT DISCLOSURES, IS THAT THEY PLAN TO CALL SOME OF
11 THESE PHARMACEUTICAL COMPANY WITNESSES QUITE EARLY IN THEIR
12 CASE-IN-CHIEF.

13 THEY DID MAKE THAT REPRESENTATION ABOUT THEIR OPENING
14 STATEMENT, WHICH I VERY MUCH CONSIDERED.

15 I'M HAPPY TO SPEAK TO THE TIMELINESS ISSUE. I THINK IT'S
16 JUST SORT OF A BRIEF MATTER.

17 AS THE COURT KNOWS, THE PARTIES CAN RAISE EVIDENTIARY
18 OBJECTIONS IN TRIAL, AND WE COULD HAVE FILED THIS IDENTICAL
19 BRIEF THE MORNING THAT MR. WEBER WAS SCHEDULED TO GET ON THE
20 STAND.

21 WE FILED IT UNDER THE NORMAL NOTING PERIOD ALLOWED BY THE
22 LOCAL RULES. THE GOVERNMENT HAD THE FULL RESPONSE PERIOD
23 ALLOWED BY THE LOCAL RULES. IT'S ONLY THE HEARING DATE THAT
24 HAS BEEN PUSHED UP A FEW DAYS TO MAKE SURE WE'RE AHEAD OF
25 OPENINGS.

10:23AM 1 I THINK, AND AS THE CASES THAT WE CITE IN OUR REPLY POINT
10:23AM 2 OUT, ALLOWING THIS PROCESS TO PLAY OUT THE WAY IT IS, IS BETTER
10:23AM 3 THAN WAITING UNTIL THE NIGHT BEFORE OR THE MORNING OF. IT
10:23AM 4 GIVES THE COURT AT LEAST SOME TIME, AND AS EXCELLENT AS
10:23AM 5 MS. VOLKAR IS, AND I'VE KNOWN HER FOR SOME TIME, I KNOW SHE CAN
10:23AM 6 WRITE A KILLER BRIEF OVERNIGHT.

10:23AM 7 I DON'T KNOW IF SHE CAN WRITE A KILLER BRIEF IN FOUR
10:23AM 8 MINUTES, WHICH IS WHAT WOULD HAPPEN IF WE BROUGHT THIS TYPE OF
10:23AM 9 MOTION THE MORNING OF.

10:23AM 10 SO I'M HAPPY TO SPEAK TO IT, YOUR HONOR.

10:23AM 11 THE COURT: MAYBE FIVE OR SIX MINUTES.

10:23AM 12 MR. BRECHER: I'D SAY AT LEAST SEVEN, BUT SHE IS
10:23AM 13 VERY GOOD, YOUR HONOR.

10:23AM 14 KNOWING, YOUR HONOR, THAT AT LEAST ONE PRONG OF OUR
10:23AM 15 MOTION, WHICH IS THE 403 ELEMENT, DIDN'T ARISE UNTIL AFTER THE
10:23AM 16 MIL DEADLINE. AND OF COURSE WE BROUGHT THIS UP IN A MEET AND
10:23AM 17 CONFER AND WHEN WE LEARNED WE SWIFTLY MOVED.

10:23AM 18 THE COURT: SURE. I APPRECIATE IT. I APPRECIATE
10:23AM 19 THE FACT THAT YOU ARE USING THE MEET AND CONFER PROCESS TO MAKE
10:24AM 20 THE TRIAL MORE EFFICIENT, WHILE ALLOWING YOU BOTH TO DO WHAT
10:24AM 21 YOU NEED TO DO ON EACH SIDE, AND I'M GRATEFUL FOR THAT.

10:24AM 22 AND I THINK THE OBJECTION FROM THE GOVERNMENT WAS, WELL,
10:24AM 23 THE LAST DAY TO FILE MOTIONS WAS NOVEMBER, OR SOMETHING LIKE
10:24AM 24 THAT.

10:24AM 25 AS YOU POINT OUT, THE TRIAL IS A FLUID PROCESS. THINGS

10:24AM 1 HAPPEN. I APPRECIATE THE FACT THAT YOU RESPECT THAT FILING A
10:24AM 2 MOTION THE NIGHT BEFORE, THE MORNING OF, IS -- AND I'VE USED
10:24AM 3 THE PHRASE BEFORE -- MOZART TO A JUDGE'S EAR. IT'S PROBABLY
10:24AM 4 MORE LIKE LED ZEPPELIN TO CERTAIN JUDGE'S EARS.

10:24AM 5 MR. BRECHER: I UNDERSTAND. I CAN'T SAY THAT WILL
10:24AM 6 NEVER HAPPEN. BUT ALWAYS, AS YOUR HONOR POINTED OUT, IT'S A
10:24AM 7 FLUID PROCESS. I THINK THE PHRASE IN THE HOLMES TRIAL YOU USED
10:24AM 8 WAS A MOVABLE FEAST ON A RELATED ISSUE.

10:24AM 9 BUT ONCE THIS ISSUE CAME TO OUR MINDS AND WE CONFERRED
10:25AM 10 WITH THE GOVERNMENT, WE MOVED SWIFTLY AND WANTED TO PUT IT IN
10:25AM 11 FRONT OF YOU.

10:25AM 12 SO THANK YOU FOR HEARING US TODAY.

10:25AM 13 THE COURT: THANK YOU SO MUCH. MATTER IS UNDER
10:25AM 14 SUBMISSION. THANK YOU SO MUCH.

10:25AM 15 MS. VOLKAR: THANK YOU, YOUR HONOR. AND THANK YOU
10:25AM 16 FOR THE KIND WORDS.

10:25AM 17 THE COURT: SO I BELIEVE -- LET'S MOVE ON TO ANOTHER
10:25AM 18 ISSUE. THE RECORD SHOULD REFLECT IT'S 10:25.

10:25AM 19 I BELIEVE WE ASKED THOSE SIX JURORS TO COME BACK THIS
10:25AM 20 MORNING.

10:25AM 21 ARE THEY HERE?

10:25AM 22 THE CLERK: THEY ARE HERE.

10:25AM 23 THE COURT: GREAT. SO, COUNSEL, DO YOU WANT TO TAKE
10:25AM 24 A MOMENT TO REGROUP ON THIS?

10:25AM 25 MR. SCHENK, MR. COOPERSMITH.

10:25AM 1 MR. SCHENK: THANK YOU, YOUR HONOR.

10:25AM 2 YES, I THINK THAT WOULD BE GREAT, JUST A FEW MINUTES MAYBE
10:25AM 3 WHILE THE JURY IS BROUGHT UP.

10:25AM 4 AND THEN IS THE PLAN TO DO THE SAME THING THAT WE DID
10:25AM 5 YESTERDAY WITH THE GROUP, AND THAT IS, SORT OF BEGIN THE
10:25AM 6 QUESTIONS WITH ALL OF THEM IN THE COURTROOM TO DETERMINE
10:25AM 7 WHETHER INDIVIDUAL VOIR DIRE OF THIS, I BELIEVE IT'S SIX OR SO
10:26AM 8 INDIVIDUALS, IS NECESSARY?

10:26AM 9 THE COURT: THAT WAS MY THOUGHT.

10:26AM 10 MR. COOPERSMITH.

10:26AM 11 MR. COOPERSMITH: YES. AS I SAID YESTERDAY, THAT
10:26AM 12 WAS CERTAINLY BETTER THAN TRYING TO DO IT WITH THE WHOLE VENIRE
10:26AM 13 PANEL HERE.

10:26AM 14 IT IS AWKWARD TO TRY TO GET AT WHAT THEIR KNOWLEDGE IS
10:26AM 15 ABOUT THE RELATIONSHIP IN THE GROUP SETTING. I THINK THE TWO
10:26AM 16 THAT WERE BROUGHT IN YESTERDAY WERE -- THAT WAS MORE EFFECTIVE
10:26AM 17 AND IT DIDN'T TAKE TOO MUCH TIME.

10:26AM 18 THE COURT: RIGHT.

10:26AM 19 MR. COOPERSMITH: BUT THAT'S OUR PREFERENCE.

10:26AM 20 BUT, AGAIN, THE GROUP OF 6 IS BETTER THAN A GROUP OF 40.

10:26AM 21 THE COURT: WELL, LET'S START WITH THEM, AND THEN
10:26AM 22 YOUR ARTFUL QUESTIONING WILL DEVELOP WHETHER AND WHEN WE NEED
10:26AM 23 TO GO AND SPEAK INDIVIDUALLY, AND YOU SHOULD JUST LET ME KNOW
10:26AM 24 AND NOT BE SHY ABOUT SAYING, JUDGE, CAN WE STOP HERE AND MAYBE
10:26AM 25 WE'LL INVITE A PRIVATE CONVERSATION WITH THIS JUROR, OR

10:26AM 1 SOMETHING LIKE THAT.

10:26AM 2 MR. COOPERSMITH: YES, YOUR HONOR. I UNDERSTAND.

10:26AM 3 IN TERMS OF AN AGENDA THAT WE WOULD LIKE TO PROPOSE, YES,
10:26AM 4 THAT'S THE FIRST ITEM OR ORDER OF BUSINESS TODAY, TO DO THIS
10:27AM 5 WITH THE SIX JURORS. THAT'S ABOUT THEIR KNOWLEDGE OF THE
10:27AM 6 RELATIONSHIP.

10:27AM 7 AND THEN WE ALSO HAVE THE ISSUE OF CAUSE AND HARDSHIP
10:27AM 8 ISSUES FROM PANEL ONE FROM THE FIRST DAY, LAST WEDNESDAY.

10:27AM 9 AND THEN AFTER THAT WE CAN TALK MORE ABOUT WHAT THIS JURY
10:27AM 10 LOOKS LIKE BASED ON WHERE THE LANDSCAPE IS.

10:27AM 11 THE COURT: RIGHT. WELL, WHAT I'M HOPING TO DO --
10:27AM 12 THANK YOU.

10:27AM 13 WHAT I'M HOPING TO DO WITH OUR TIME TODAY IS TO DO THAT,
10:27AM 14 ALL OF THAT, AND HOPEFULLY GET A FINAL UNIVERSE OF OUR PANEL
10:27AM 15 TODAY.

10:27AM 16 I'D LIKE US TO BEGIN THE JURY SELECTION PROCESS TODAY,
10:27AM 17 THAT IS, PASSING YOUR SELECTIONS FOR ANY PEREMPTORY CHALLENGES
10:27AM 18 THAT YOU MIGHT HAVE SUCH THAT WE COULD SECURE A JURY AND
10:27AM 19 ALTERNATES TODAY, NOTIFY THOSE INDIVIDUALS TO REPORT TO COURT,
10:27AM 20 SWEAR THEM IN, AND THEN BEGIN THE CASE.

10:27AM 21 I THINK WE CAN DO THAT TODAY.

10:27AM 22 MR. COOPERSMITH: YOUR HONOR, IT'S POSSIBLE. I
10:27AM 23 THINK WE HAVE TO SEE WHAT THE NUMBERS ARE AFTER THE ADDITIONAL
10:28AM 24 CAUSE AND SOME HARDSHIP ISSUES THAT WE NEVER ADDRESSED FROM
10:28AM 25 PANEL ONE.

10:28AM 1 ONCE WE GET THROUGH THAT, THEN WE'LL KNOW WHAT THE NUMBER
10:28AM 2 IS.
10:28AM 3 BUT I THINK THE MINIMUM NUMBER IS 40.
10:28AM 4 THE COURT: RIGHT.
10:28AM 5 MR. COOPERSMITH: AND IF WE HAVE MORE THAN 40, THEN
10:28AM 6 YES.
10:28AM 7 WE HAVE SOME OTHER ISSUES THAT WE WOULD LIKE TO DISCUSS
10:28AM 8 ABOUT THE PROCESS, BUT, YES, IT DEPENDS ON WHAT THE NUMBERS ARE
10:28AM 9 AFTER THE SIX COMING IN AND THEN THE ADDITIONAL STRIKES FROM
10:28AM 10 WEDNESDAY.
10:28AM 11 THE COURT: OKAY.
10:28AM 12 MR. SCHENK: THAT AGENDA SOUNDS GREAT TO THE
10:28AM 13 GOVERNMENT.
10:28AM 14 THE COURT: OKAY. ALL RIGHT. LET'S TAKE A BRIEF
10:28AM 15 BREAK AND WE'LL COME BACK IN ABOUT TEN MINUTES.
10:28AM 16 MR. SCHENK: THANK YOU.
10:28AM 17 (RECESS FROM 10:28 A.M. UNTIL 10:43 A.M.)
10:43AM 18 (PROSPECTIVE JUROR NUMBERS 10, 34, 48, 80, 82, AND 83 IN
10:43AM 19 AT 10:43 A.M.)
10:43AM 20 THE COURT: WE ARE BACK ON THE RECORD IN THE BALWANI
10:44AM 21 MATTER.
10:44AM 22 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.
10:44AM 23 WE HAD INVITED BACK CERTAIN PROSPECTIVE JURORS, AND THESE
10:44AM 24 ARE -- AGAIN, I'M GOING TO REFERENCE BY JUROR NUMBERS, PLEASE.
10:44AM 25 WHEN I CALL YOUR NUMBER, IF YOU COULD JUST RAISE YOUR HAND

10:44AM 1 JUST FOR CONFIRMATION.

10:44AM 2 JUROR NUMBER 10. THANK YOU.

10:44AM 3 34. THANK YOU.

10:44AM 4 48. THANK YOU.

10:44AM 5 80.

10:44AM 6 82. THANK YOU.

10:44AM 7 AND 83. THANK YOU.

10:44AM 8 THANK YOU ALL FOR COMING BACK. GOOD MORNING. I APOLOGIZE
10:44AM 9 FOR THE INCONVENIENCE THAT THIS MAY HAVE CAUSED YOU COMING
10:44AM 10 BACK.

10:44AM 11 WE ASKED YOU TO COME BACK TODAY FOR A LIMITED PURPOSE, AND
10:44AM 12 THIS IS IN REGARDS TO THE RESPONSE TO SOME QUESTIONS BOTH ON
10:45AM 13 YOUR QUESTIONNAIRES AND ALSO ON QUESTIONS THAT WERE ASKED
10:45AM 14 YESTERDAY. THIS IS SPECIFICALLY RELATED TO YOUR KNOWLEDGE OF
10:45AM 15 THE HOLMES CASE, I THINK.

10:45AM 16 IS THAT CORRECT, COUNSEL? IS THAT WHAT YOU WOULD LIKE?

10:45AM 17 MR. COOPERSMITH: YOUR HONOR, NO. IT HAS TO DO WITH
10:45AM 18 THE RELATIONSHIP BETWEEN MR. BALWANI AND --

10:45AM 19 THE COURT: I SEE. ALL RIGHT. THANK YOU.

10:45AM 20 THE RELATIONSHIP BETWEEN MR. BALWANI AND MS. HOLMES.

10:45AM 21 AND THERE WERE SOME COMMENTS MADE THAT COUNSEL AND I WOULD
10:45AM 22 LIKE TO FOLLOW UP WITH YOU ON THAT.

10:45AM 23 AND YOU ANSWERED THOSE QUESTIONS IN YOUR QUESTIONNAIRE.

10:45AM 24 YOU RESPONDED TO SOME QUESTIONS OF COUNSEL.

10:45AM 25 WE JUST WANTED TO ASK YOU SOME FOLLOW-UP QUESTIONS THIS

10:45AM 1 MORNING ABOUT THAT. COLLECTIVELY, IT MAY BE THAT WE'LL -- IT
10:46AM 2 MAY BE THAT WE WILL TALK WITH YOU PRIVATELY, INDIVIDUALLY,
10:46AM 3 ABOUT THIS.

10:46AM 4 BUT LET ME SEE. MR. -- WOULD YOU LIKE TO GO FIRST,
10:46AM 5 MR. COOPERSMITH?

10:46AM 6 MR. COOPERSMITH: I'M HAPPY TO, YOUR HONOR.

10:46AM 7 THE COURT: SURE. GO RIGHT AHEAD.

10:46AM 8 MR. COOPERSMITH: MAY I REMOVE MY MASK?

10:46AM 9 THE COURT: YES. THANK YOU.

10:46AM 10 MR. COOPERSMITH: GOOD MORNING, EVERYONE.

10:46AM 11 AGAIN, NOT THAT YESTERDAY YOU HAD A CHOICE, BUT THANK YOU
10:46AM 12 FOR COMING BACK HERE. AS JUDGE DAVILA SAID, I'M SORRY FOR THE
10:46AM 13 IMPOSITION THAT THAT CAUSES TO YOUR SCHEDULES.

10:46AM 14 AS WE SAID THE OTHER DAY WHEN YOU WERE HERE, I BELIEVE IT
10:46AM 15 WAS ON WEDNESDAY, THIS IS A VERY IMPORTANT PROCESS TO MAKE SURE
10:46AM 16 THAT WE CAN HAVE AS FAIR A TRIAL AS POSSIBLE. SO, AGAIN, THANK
10:46AM 17 YOU.

10:46AM 18 AND AS I SAID BEFORE ON WEDNESDAY, THERE ARE NO WRONG
10:46AM 19 ANSWERS TO THE QUESTIONS THAT I'LL ASK. IT'S REALLY JUST A
10:46AM 20 MATTER OF NOT ABOUT YOU PERSONALLY, WHETHER YOU'RE A FAIR
10:46AM 21 PERSON OR GOOD PERSON, JUST WHETHER YOU HAVE CERTAIN KNOWLEDGE
10:47AM 22 THAT COULD BE AN ISSUE, YOU KNOW, WITH SERVING AS A JUROR IN
10:47AM 23 THIS CASE.

10:47AM 24 SO THANK YOU AGAIN.

10:47AM 25 LET ME JUST TELL YOU WHAT THIS IS ABOUT AGAIN. SO FOR

10:47AM 1 SOME OF YOU IN THE QUESTIONNAIRES, AND SOME OF YOU HAVE BY A
10:47AM 2 SHOW OF HANDS, THERE WAS A QUESTION ABOUT WHETHER YOU WERE
10:47AM 3 AWARE OF A RELATIONSHIP, AND SPECIFICALLY A ROMANTIC
10:47AM 4 RELATIONSHIP, BETWEEN MR. BALWANI AND ELIZABETH HOLMES.

10:47AM 5 MR. BALWANI IS THE DEFENDANT WHO IS ON TRIAL IN THIS
10:47AM 6 PROCEEDING, NOT MS. HOLMES.

10:47AM 7 AND THE QUESTION WAS, ARE YOU AWARE OF THE RELATIONSHIP?

10:47AM 8 AND OUR UNDERSTANDING IS THAT ALL OF YOU RAISED YOUR HANDS
10:47AM 9 IN RESPONSE TO THAT.

10:47AM 10 SO LET ME JUST FIRST CONFIRM THAT THAT'S THE CASE TO MAKE
10:47AM 11 SURE THAT WE'VE GOT THE RIGHT PEOPLE, RIGHT.

10:47AM 12 AND SIR, YOU'RE JUROR NUMBER 83?

10:47AM 13 JUROR: I'M SORRY?

10:47AM 14 MR. COOPERSMITH: ARE YOU JUROR NUMBER 83?

10:47AM 15 JUROR: I'M SORRY, I CAN'T --

10:47AM 16 MR. COOPERSMITH: ARE YOU JUROR NUMBER 83?

10:47AM 17 JUROR: YES, YES.

10:48AM 18 MR. COOPERSMITH: AND DID YOU ALSO RAISE YOUR HAND,
10:48AM 19 SIR, IN RESPONSE TO THAT QUESTION?

10:48AM 20 JUROR: YES, I DID.

10:48AM 21 MR. COOPERSMITH: SO MY FIRST QUESTION IS, IS THERE
10:48AM 22 ANYTHING ABOUT YOUR KNOWLEDGE OF THE RELATIONSHIP BETWEEN
10:48AM 23 MR. BALWANI AND MS. HOLMES, AND SPECIFICALLY THE ROMANTIC
10:48AM 24 RELATIONSHIP, THAT GIVES YOU ANY DOUBT THAT YOU COULD BE A FAIR
10:48AM 25 AND IMPARTIAL JUROR?

10:48AM 1 THE COURT: IS THIS FOR THE ENTIRE GROUP?

10:48AM 2 MR. COOPERSMITH: THIS IS FOR THE ENTIRE GROUP.

10:48AM 3 COULD YOU RAISE YOUR HAND IF YOU THINK IT GIVES YOU ANY
10:48AM 4 DOUBT AT ALL HAVING THAT KNOWLEDGE, WHETHER YOU COULD BE FAIR
10:48AM 5 AND IMPARTIAL?

10:48AM 6 SO JUROR NUMBER 34 AND JUROR NUMBER 10, YOU RAISED YOUR
10:48AM 7 HANDS.

10:48AM 8 ANY OTHER RESPONSES?

10:48AM 9 OKAY. I SEE NO OTHER HANDS.

10:48AM 10 NOW, I KNOW THAT, AND MAYBE WE ALL KNOW, THAT ROMANTIC
10:49AM 11 RELATIONSHIPS CAN BE COMPLEX. THAT'S JUST THE WAY THAT LIFE
10:49AM 12 IS.

10:49AM 13 AND MY NEXT QUESTION IS, BY A SHOW OF HANDS, PLEASE RAISE
10:49AM 14 YOUR HAND IF YOU WERE AWARE OF ANYTHING ABOUT THE RELATIONSHIP
10:49AM 15 BETWEEN MS. HOLMES AND MR. BALWANI WHERE THERE WAS SOME
10:49AM 16 DIFFICULTIES IN THE RELATIONSHIP THAT WERE AT LEAST ALLEGED OR
10:49AM 17 REPORTED ON IN THE MEDIA THAT YOU MAY HAVE READ.

10:49AM 18 AND THAT'S JUROR NUMBER 79?

10:49AM 19 JUROR: 80.

10:49AM 20 MR. COOPERSMITH: OH, 80.

10:49AM 21 JUROR: 82.

10:49AM 22 MR. COOPERSMITH: AND?

10:49AM 23 JUROR: 83.

10:49AM 24 MR. COOPERSMITH: ANY OTHER HANDS ON THAT ONE?

10:49AM 25 THANK YOU, YOUR HONOR.

10:49AM 1 THOSE WERE THE QUESTIONS THAT I WANTED TO ASK, YOUR HONOR.

10:49AM 2 CAN WE HAVE A MOMENT?

10:49AM 3 THE COURT: DID YOU WANT TO TALK WITH YOUR TEAM?

10:49AM 4 MR. COOPERSMITH: TO YOUR HONOR.

10:49AM 5 THE COURT: ALL RIGHT. SURE.

10:49AM 6 WITH MR. SCHENK HERE?

10:49AM 7 LET ME ASK YOU THIS, MR. COOPERSMITH, IS IT YOUR --

10:50AM 8 FIRST OF ALL, MR. SCHENK, DO YOU HAVE ANY QUESTIONS?

10:50AM 9 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

10:50AM 10 THE COURT: MR. COOPERSMITH, WOULD YOU LIKE ME TO

10:50AM 11 INVITE ANY OF THESE JURORS TO A PRIVATE CONVERSATION WITH YOU,

10:50AM 12 ME, AND THE GOVERNMENT?

10:50AM 13 MR. COOPERSMITH: YES, YOUR HONOR.

10:50AM 14 AND MAYBE THAT WOULD BE AN EASIER WAY TO DO IT, JUST TO

10:50AM 15 SAY THE JURORS WHO RESPONDED AFFIRMATIVELY IN ONE WAY OR THE

10:50AM 16 OTHER, I THINK THAT WOULD BE HELPFUL.

10:50AM 17 THERE WAS ONE JUROR --

10:50AM 18 I'M SORRY, SIR. YOUR JUROR NUMBER?

10:50AM 19 JUROR: 48.

10:50AM 20 MR. COOPERSMITH: 48. I DON'T THINK JUROR 48 RAISED

10:50AM 21 HIS HAND IN RESPONSE TO EITHER QUESTION, SO I DON'T THINK IT'S

10:50AM 22 NECESSARY FOR JUROR 48.

10:50AM 23 THE COURT: OKAY.

10:50AM 24 MR. COOPERSMITH: BUT FOR THE OTHER JURORS.

10:50AM 25 THE COURT: OKAY. ARE YOU SAYING THAT WE COULD

10:50AM 1 RELEASE JUROR 48 IN YOUR OPINION?

10:50AM 2 MR. COOPERSMITH: YES, YOUR HONOR.

10:50AM 3 THE COURT: FOR PURPOSES OF THIS MORNING?

10:50AM 4 MR. COOPERSMITH: YES, YOUR HONOR.

10:50AM 5 THE COURT: OKAY.

10:50AM 6 MR. SCHENK?

10:50AM 7 MR. SCHENK: I AGREE REGARDING JUROR 48.

10:50AM 8 THE COURT: OKAY. JUROR 48, THANK YOU FOR COMING

10:50AM 9 IN. IT'S GOOD SEEING YOU AGAIN.

10:51AM 10 JUROR: GREAT.

10:51AM 11 THE COURT: YOU'LL BE NOTIFIED AGAIN WHETHER OR NOT

10:51AM 12 YOU NEED TO RETURN AND WHEN THAT WOULD BE, SIR. THANK YOU.

10:51AM 13 JUROR: OKAY. THANK YOU.

10:51AM 14 THE COURT: THANK YOU.

10:51AM 15 (PROSPECTIVE JUROR NUMBER 48 NOT PRESENT.)

10:51AM 16 THE COURT: SO, FOLKS, I THINK WHAT I'D LIKE TO DO

10:51AM 17 IS TO USE THE ROOM BACK HERE, AND THEN WE CAN HAVE A

10:51AM 18 CONVERSATION WITH EACH JUROR PRIVATELY.

10:51AM 19 I DON'T THINK THIS IS GOING TO TAKE VERY LONG.

10:51AM 20 MR. COOPERSMITH? MR. SCHENK?

10:51AM 21 MR. COOPERSMITH: I DON'T THINK EITHER, YOUR HONOR.

10:51AM 22 THE COURT: MR. SCHENK, I DON'T THINK IT WILL.

10:51AM 23 SO, LADIES AND GENTLEMEN, WE'RE GOING TO CALL YOU BACK ONE

10:51AM 24 AT A TIME TO SPEAK WITH US PRIVATELY IN THE BACK ROOM HERE.

10:51AM 25 YOU'LL JUST WAIT HERE. THE BALANCE OF YOU WILL JUST PLEASE SIT

10:51AM 1 HERE AND WAIT UNTIL WE'RE READY FOR YOU OR YOU'RE CALLED TO
10:51AM 2 COME BACK.

10:51AM 3 I DON'T THINK THIS WILL TAKE TOO LONG.

10:52AM 4 IF ANY OF YOU WOULD LIKE ANY REFRESHMENTS WHILE YOU'RE
10:52AM 5 WAITING, PLEASE LET MS. ROBINSON KNOW, AND WE CAN GET YOU
10:52AM 6 WATER. I THINK WE HAVE TEA AVAILABLE AS WELL IF YOU WOULD LIKE
10:52AM 7 SOME.

10:52AM 8 BUT I DON'T THINK THIS WILL TAKE TOO LONG.

10:52AM 9 OKAY. LET'S START WITH JUROR 34 THEN, AND WE'LL HAVE YOU
10:52AM 10 ESCORTED BACK.

10:52AM 11 COUNSEL, WHO IS GOING TO COME BACK? MR. SCHENK?

10:52AM 12 MS. SCHENK: YES, YOUR HONOR.

10:52AM 13 THE COURT: THANK YOU.

10:52AM 14 MR. COOPERSMITH, YOU'RE GOING TO COME BACK, AND YOU WOULD
10:52AM 15 LIKE MS. WALSH TO JOIN YOU?

10:52AM 16 MR. COOPERSMITH: YES, YOUR HONOR.

11:43AM 17 MR. SCHENK: AND WE WOULD LIKE MR. LEACH.

11:43AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:43AM 19 (SIDE-BAR CONFERENCE ON THE RECORD.)

11:43AM 20 (PROSPECTIVE JUROR NUMBER 34 IS PRESENT.)

11:43AM 21 THE COURT: ALL RIGHT. WE'RE ON THE RECORD -- THE
11:43AM 22 FLOOR JUST GOT TALLER OR SOMETHING.

11:43AM 23 WE'RE ON THE RECORD OUTSIDE THE PRESENCE OF THE COURTROOM.
11:43AM 24 WE'RE IN THE JURY DELIBERATION ROOM WITH JUROR NUMBER 34
11:43AM 25 MEETING PRIVATELY WITH COUNSEL, MR. LEACH, MR. SCHENK,

11:43AM 1 MS. WALSH, AND MR. COOPERSMITH.

11:43AM 2 AND, MR. COOPERSMITH, DID YOU HAVE QUESTIONS FOR JUROR 34?

11:43AM 3 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

11:43AM 4 AND WILL YOU BE COMFORTABLE IF I REMOVE MY MASK?

11:43AM 5 PROSPECTIVE JUROR: YES, ABSOLUTELY.

11:43AM 6 MR. COOPERSMITH: OKAY. THANK YOU.

11:43AM 7 AGAIN, THANK YOU FOR YOUR TIME.

11:43AM 8 PROSPECTIVE JUROR: NO WORRIES.

11:43AM 9 MR. COOPERSMITH: AND BEING HONEST. IT'S JUST THAT

11:43AM 10 THIS IS THE PROCESS.

11:43AM 11 PROSPECTIVE JUROR:

11:43AM 12 MR. COOPERSMITH: AND MY FIRST QUESTION FOR YOU IS,

11:43AM 13 YOU RAISED YOUR HAND ABOUT KNOWLEDGE OF THE RELATIONSHIP; IS

11:43AM 14 THAT RIGHT?

11:43AM 15 PROSPECTIVE JUROR: THAT'S RIGHT.

11:43AM 16 MR. COOPERSMITH: AND THEN YOU ALSO SAID JUST NOW

11:43AM 17 YOU WEREN'T SURE IF YOU COULD BE FAIR; IS THAT RIGHT?

11:43AM 18 PROSPECTIVE JUROR: YES.

11:43AM 19 MR. COOPERSMITH: SO I GUESS FOR STARTERS, CAN YOU

11:43AM 20 TELL US WHAT YOU KNOW ABOUT THE RELATIONSHIP BETWEEN

11:43AM 21 MR. BALWANI AND MS. HOLMES?

11:43AM 22 PROSPECTIVE JUROR: YEAH. I CAN SAY I DON'T KNOW

11:43AM 23 THAT MUCH. JUST AS THE COURT ASKED OF KNOWING ANYTHING ABOUT

11:43AM 24 THE CASE, THAT WAS JUST A PIECE OF INFORMATION THAT I KNEW.

11:43AM 25 I DIDN'T FOLLOW THAT SPECIFIC PLOT LINE OR WHATEVER VERY

11:43AM 1 CLOSELY, BUT I JUST KNEW FROM EITHER READING SOMEWHERE OR AT
11:43AM 2 SOME POINT IN THE COURSE OF THE ORIGINAL TRIAL OR WHATEVER THAT
11:43AM 3 THAT WAS THE CASE, BUT I NEVER REALLY FOLLOWED IT VERY CLOSELY.

11:43AM 4 MR. COOPERSMITH: OKAY. AND WHAT, IF ANYTHING,
11:43AM 5 ABOUT THE RELATIONSHIP BETWEEN MR. BALWANI AND MS. HOLMES, EVEN
11:43AM 6 IF YOU DON'T KNOW TOO MUCH ABOUT IT, WHAT ABOUT THAT PROMPTED
11:43AM 7 YOU TO SAY THAT YOU WEREN'T SURE IF YOU COULD BE FAIR?

11:43AM 8 PROSPECTIVE JUROR: YEAH, SO THAT ONE CAME TO ME
11:43AM 9 RIGHT -- REALLY QUICK. THE FIRST THING IS, LIKE, ANY
11:43AM 10 RELATIONSHIP REQUIRES COMMUNICATION AND THINGS LIKE THAT,
11:43AM 11 RIGHT? I MEAN, THIS IS GENERAL.

11:43AM 12 AND SO WHEN YOU ASKED THE QUESTION, THE FIRST THING I
11:43AM 13 THOUGHT WAS, WELL, HOW CAN I SEPARATE THOSE TWO PEOPLE WHO HAVE
11:43AM 14 THAT KIND OF RELATIONSHIP SORT OF STATUS TO NOT HAVE, YOU KNOW,
11:43AM 15 SOME KNOWLEDGE OF WHAT ONE OR THE OTHER IS DOING?

11:43AM 16 AND THEN IT LED ME TO THINK ABOUT THE OUTCOME OF THE
11:43AM 17 ELIZABETH HOLMES TRIAL.

11:43AM 18 SO I THOUGHT TO MYSELF, WELL, IS THERE A COMMUNICATIVE
11:43AM 19 PROPERTY, SOMETHING IN MY HEAD, THAT COULD CLOUD THAT JUDGMENT
11:43AM 20 BECAUSE OF, YOU KNOW, THE RELATIONSHIP AND THEN THE OUTCOME OF
11:43AM 21 THE OTHER?

11:43AM 22 MR. COOPERSMITH: I SEE.

11:43AM 23 PROSPECTIVE JUROR: THAT'S WHY I RAISED MY HAND
11:43AM 24 BECAUSE THERE WAS A DOUBT IN MY HEAD.

11:43AM 25 MR. COOPERSMITH: THANK YOU. IT SOUNDS LIKE YOU DO

11:43AM 1 KNOW ABOUT THE OUTCOME OF THE OTHER CASE?

11:43AM 2 PROSPECTIVE JUROR: I DO.

11:43AM 3 MR. COOPERSMITH: AND WHAT DO YOU KNOW ABOUT THAT?

11:43AM 4 WHAT IS THE OUTCOME?

11:43AM 5 PROSPECTIVE JUROR: I KNOW THERE WAS LIKE, FOUR, I

11:43AM 6 DON'T KNOW IF THE TERM IS COUNTS OF GUILTY. THAT'S PRETTY MUCH

11:43AM 7 ALL I KNOW.

11:43AM 8 MR. COOPERSMITH: OKAY.

11:43AM 9 PROSPECTIVE JUROR: I KNOW, LIKE, IT WASN'T A CLEAN,

11:43AM 10 LIKE, YOU KNOW, NOT GUILTY.

11:43AM 11 MR. COOPERSMITH: IT SOUNDS LIKE YOU KNOW SHE WAS

11:43AM 12 CONVICTED AND FOUND GUILTY OF SOME THINGS?

11:43AM 13 PROSPECTIVE JUROR: YES, YES.

11:43AM 14 MR. COOPERSMITH: AND JUST SO I UNDERSTAND, ARE YOU

11:43AM 15 SAYING THAT BECAUSE YOU KNOW ABOUT THAT, AND YOU ALSO KNOW

11:43AM 16 ABOUT A ROMANTIC RELATIONSHIP, THAT'S IT'S HARD TO UNDERSTAND

11:43AM 17 HOW MR. BALWANI WOULDN'T BE IN THE SAME BOAT AS MS. HOLMES? IS

11:43AM 18 THAT THE --

11:43AM 19 PROSPECTIVE JUROR: YEAH, THAT WAS THE IMMEDIATE

11:43AM 20 THOUGHT WHEN YOU ASKED THE QUESTION. IT WAS LIKE, WELL, I KNOW

11:43AM 21 WITH MY WIFE AND I, IF WE ARE PLANNING ANYTHING, WE PLAN IT

11:43AM 22 TOGETHER.

11:43AM 23 AND IT JUST SO HAPPENS, I MEAN, MY WIFE AND I WORK AT THE

11:43AM 24 SAME COMPANY, TOO, WHICH IS THE CASE. SO WHEN WE TALK ABOUT

11:43AM 25 STUFF AT WORK, WE EACH KNOW WHAT WE'RE DOING.

11:43AM 1 AND WHETHER OUR RELATIONSHIP IS HEALTHY OR NOT, I THINK
11:43AM 2 THERE'S THAT COMMUNICATION AND THERE'S THAT BOND OF WHAT ARE WE
11:43AM 3 GOING TO DO AT WORK KIND OF TOGETHER, ALTHOUGH WE'RE NOT IN THE
11:43AM 4 SAME DEPARTMENT.

11:43AM 5 BUT, YOU KNOW, THAT'S KIND OF WHERE I WAS GOING WITH IT.

11:43AM 6 MR. COOPERSMITH: I UNDERSTAND. AGAIN, THANK YOU.
11:43AM 7 THAT'S WHAT THIS PROCESS IS ABOUT.

11:43AM 8 SO JUST TO TELL YOU, THE JUDGE WILL INSTRUCT YOU IN THIS
11:43AM 9 CASE THAT WHATEVER THE OUTCOME OF MS. HOLMES'S CASE HAS NO
11:43AM 10 BEARING OF WHAT A JURY COULD DECIDE IN THIS CASE; RIGHT?

11:43AM 11 PROSPECTIVE JUROR: YES.

11:43AM 12 MR. COOPERSMITH: AND EVEN THOUGH THAT INSTRUCTION
11:43AM 13 IS GIVEN, DO YOU STILL FEEL IT WOULD BE HARD TO PUT OUT OF YOUR
11:43AM 14 MIND THAT YOU HAVE EXPERIENCE THE WAY YOU COMMUNICATE WITH YOUR
11:43AM 15 SPOUSE AND YOU KNOW MS. HOLMES WAS FOUND GUILTY OF SOMETHING,
11:43AM 16 SO THAT THIS WOULD BE LIKE A DIFFICULT PROCESS FOR YOU?

11:43AM 17 IS THAT FAIR? OR DO YOU THINK YOU COULD COMPLETELY PUT IT
11:43AM 18 OUT OF YOUR MIND? IT DOESN'T MATTER WHAT HAPPENED TO
11:43AM 19 MS. HOLMES, THIS IS A COMPLETELY BLANK SLATE. AND THE COURT
11:43AM 20 WOULD INSTRUCT YOU THAT WAY.

11:43AM 21 PROSPECTIVE JUROR: YEAH. I'M GUESS I'M GOING TO
11:43AM 22 ANSWER AS BLUNTLY AS I CAN. I DON'T KNOW IF I CAN PUT IT OUT
11:43AM 23 OF MY MIND. JUST HOW IN MY RELATIONSHIP HOW THE DYNAMICS WORK
11:43AM 24 AND HOW -- I DON'T EVEN KNOW, LIKE, KIND OF THE GENERAL SETUP
11:43AM 25 OF THE CASE AND HOW IT'S GOING TO WORK, BUT I ASSUME, BASED ON

11:43AM 1 THE KNOWLEDGE OF WHAT I HAVE OF THE THERANOS TRIAL AND JUST
11:43AM 2 THERANOS IN GENERAL, WHICH IS NOT A LOT, THAT THERE HAS TO BE A
11:43AM 3 CONNECTION BETWEEN ONE VERDICT AND THIS ONE.

11:43AM 4 AND I WOULD SAY, YOU KNOW, TO THE JUDGE OF COURSE, LIKE,
11:43AM 5 IF YOU ASKED ME TO TRY TO PUT IT OUT, OF COURSE I WOULD TRY,
11:43AM 6 BUT THERE'S ALWAYS THAT STRAND FOR ME.

11:43AM 7 MR. COOPERSMITH: I APPRECIATE YOUR CANDOR, SIR, SO
11:43AM 8 THANK YOU.

11:43AM 9 THE COURT: SIR, YOU HEARD ME TALK ABOUT THE FOUR
11:43AM 10 MINUTE MILE.

11:43AM 11 PROSPECTIVE JUROR: ABSOLUTELY. AND I GUESS THAT'S
11:43AM 12 THE TOUGH PART ABOUT ANY PART OF THIS, RIGHT? AND I KNOW WHAT
11:43AM 13 YOUR OBLIGATIONS ARE TO THIS, IT'S LIKE HOW DO YOU, HOW DO YOU
11:43AM 14 ASK US TO SEPARATE THAT?

11:43AM 15 AND THAT'S, LIKE, ASKING ME TO REMOVE A PART OF MY SOUL I
11:43AM 16 GUESS.

11:43AM 17 THE COURT: SURE.

11:43AM 18 PROSPECTIVE JUROR: SO I COULD IN MY MIND SAY, OKAY,
11:43AM 19 THERE'S, THERE'S NO RIGHT, LIKE, INNOCENT UNTIL PROVEN GUILTY.

11:43AM 20 BUT, YEAH, HAVING YOU ASK THAT QUESTION, I CAN ONLY TRY.
11:43AM 21 LIKE, I THINK THAT'S THE THING, RIGHT?

11:43AM 22 THE COURT: OKAY.

11:43AM 23 PROSPECTIVE JUROR: LIKE, I'M AN OBJECTIVE PERSON BY
11:43AM 24 NATURE, AND I DON'T TYPICALLY HAVE THESE REALLY SWINGING, LIKE,
11:43AM 25 OR WILD TENETS THAT I HOLD ON TO, BUT I CAN SAY THAT ONCE YOU

11:43AM 1 ASKED THAT QUESTION, IT WAS LIKE I DON'T KNOW IF I CAN.

11:43AM 2 MR. COOPERSMITH: ALL RIGHT. THANK YOU. I

11:43AM 3 APPRECIATE THAT.

11:43AM 4 THE COURT: MR. SCHENK, ANY QUESTIONS?

11:43AM 5 MR. SCHENK: YES.

11:43AM 6 MAY I?

11:43AM 7 PROSPECTIVE JUROR: YES.

11:43AM 8 MR. SCHENK: THANK YOU FOR COMING BACK TODAY AND
11:43AM 9 YOUR CANDOR.

11:43AM 10 YOU HAVE EXPRESSED A THOUGHT ABOUT YOUR ABILITY TO KEEP
11:43AM 11 CERTAIN THINGS OUT OF YOUR MIND IF YOU WERE A JUROR IN THIS
11:43AM 12 CASE, AND I JUST WANT TO MAKE SURE THAT I UNDERSTAND WHICH
11:43AM 13 THOUGHTS IT IS THAT YOU WONDER WHETHER YOU COULD KEEP OUT OF
11:43AM 14 YOUR MIND.

11:43AM 15 IT SEEMS LIKE WE'RE TALKING ABOUT TWO THINGS. ONE, YOU
11:43AM 16 DESCRIBED WHEN SPOUSES WORK AT A COMMON EMPLOYER, IT WOULD BE
11:43AM 17 NATURAL FOR THEM TO TALK, TO COMMUNICATE, TO UNDERSTAND.

11:43AM 18 AND I'M WONDERING IF IT'S YOUR EXPERIENCE IN THAT AREA
11:43AM 19 THAT YOU WOULD HAVE TROUBLE KEEPING OUT OF YOUR MIND, OR IS IT
11:43AM 20 THE VERDICT IN THE HOLMES CASE THAT YOU WOULD HAVE TROUBLE
11:43AM 21 KEEPING OUT OF YOUR MIND IF YOU WERE A JUROR IN THIS CASE?

11:43AM 22 PROSPECTIVE JUROR: I THINK THAT IS AN INTERESTING
11:43AM 23 QUESTION, BECAUSE I THINK THAT, FOR ME, ONE DOESN'T EXIST
11:43AM 24 WITHOUT THE OTHER, RIGHT?

11:43AM 25 LIKE, I COULD DEFINITELY KEEP OUT OF MY MIND, YOU KNOW,

11:43AM 1 WHAT IS SPOKEN BETWEEN SPOUSES OR SIGNIFICANT OTHERS ABOUT
11:43AM 2 WORK. THAT'S ONE SIDE.

11:43AM 3 I CAN DEFINITELY KEEP OUT OF MY MIND, LIKE, ABOUT IS
11:43AM 4 MR. BALWANI INNOCENT BEFORE PROVEN GUILTY, RIGHT?

11:43AM 5 BUT WHEN YOU TAKE THE TWO TOGETHER, THERE'S -- LIKE,
11:43AM 6 THAT'S WHERE I HAVE THE MOST TROUBLE. IT'S LIKE TO ME, THEY'RE
11:43AM 7 TIED TOGETHER ALREADY BECAUSE OF -- AND I KNOW KIND OF THE
11:43AM 8 POSITION OF EACH PERSON IN THAT COMPANY, RIGHT? AND SO NOT
11:43AM 9 ONLY AS COWORKERS, BUT AS RELATION -- SOMEONE IN A
11:43AM 10 RELATIONSHIP, LIKE, THAT COMMUNICATION IS, TO ME IN MY LIFE, IS
11:43AM 11 SUPER TIGHT.

11:43AM 12 AND SO INDIVIDUALLY I THINK, SURE, LIKE, I CAN TAKE THOSE
11:43AM 13 TWO THINGS AND COMPARTMENTALIZE AND SAY, OKAY, I COULD DO VERY
11:43AM 14 FAIR, LIKE, JUDGMENT OF IT.

11:43AM 15 WHEN YOU BRING THEM TOGETHER, IT PUTS ME IN A LITTLE BIT
11:43AM 16 OF QUESTION.

11:43AM 17 I'M NOT SAYING THAT I CAN'T DO IT. LIKE, I'M GREAT AT
11:43AM 18 FOLLOWING DIRECTIONS. BUT THERE'S JUST THAT THING THERE FOR
11:43AM 19 ME.

11:43AM 20 MR. SCHENK: THANK YOU. I APPRECIATE YOUR ANSWER.

11:43AM 21 THE COURT: ANYTHING FURTHER?

11:43AM 22 MR. SCHENK: NO. THANK YOU.

11:43AM 23 MR. COOPERSMITH: NO, THANK YOU.

11:43AM 24 THE COURT: ACTUALLY, YOU CAN STEP OUTSIDE.

11:43AM 25 ANY REASON THAT WE CAN'T ASK JUROR NUMBER 34 TO GO HOME?

11:43AM 1 PROSPECTIVE JUROR: I CAN HEAD OUT?

11:43AM 2 THE COURT: YES. HAVE A GREAT WEEKEND, AND YOU'LL

11:43AM 3 HEAR FROM THE CLERK'S OFFICE AS TO WHAT NEXT STEPS THERE ARE

11:43AM 4 FOR THIS JURY.

11:43AM 5 PROSPECTIVE JUROR: AND THE TRIAL STARTS ON TUESDAY,

11:43AM 6 SO I WOULD HEAR PROBABLY BY MONDAY?

11:43AM 7 THE COURT: I WOULD THINK SO. I WOULD THINK SO.

11:43AM 8 THAT'S OUR HOPE.

11:43AM 9 PROSPECTIVE JUROR: OKAY. GREAT. THANK YOU SO

11:43AM 10 MUCH.

11:43AM 11 THE COURT: THANK YOU.

11:43AM 12 (PROSPECTIVE JUROR NUMBER 34 IS NOT PRESENT.)

11:43AM 13 THE COURT: LET'S GO OFF THE RECORD FOR JUST A

11:43AM 14 MOMENT. THANK YOU.

11:43AM 15 (PAUSE IN PROCEEDINGS.)

11:43AM 16 THE COURT: NUMBER 10 IS NEXT.

11:43AM 17 (PROSPECTIVE JUROR NUMBER 10 IS PRESENT.)

11:43AM 18 THE COURT: LET'S GO BACK ON THE RECORD. WE'LL

11:43AM 19 BRING IN JUROR 10.

11:43AM 20 THE CLERK: JUROR 10.

11:43AM 21 THE COURT: THANK YOU.

11:43AM 22 GOOD MORNING. PLEASE BE SEATED. THANK YOU.

11:43AM 23 WE'RE ON THE RECORD WITH COUNSEL AND JUROR NUMBER 10.

11:43AM 24 THANK YOU, JUROR NUMBER 10. THANK YOU FOR COMING IN.

11:43AM 25 PROSPECTIVE JUROR: OKAY.

11:43AM 1 THE COURT: WE WANTED TO TALK WITH YOU PRIVATELY
11:43AM 2 OUTSIDE OF YOUR COLLEAGUE JURORS JUST TO FOLLOW UP ON A COUPLE
11:43AM 3 OF QUESTIONS HERE.

11:43AM 4 YOU'RE NOT IN TROUBLE. THIS IS NOT ANYTHING THAT YOU
11:43AM 5 SHOULD BE WORRIED ABOUT OR CONCERNED ABOUT. IT'S JUST SOME OF
11:43AM 6 THESE TOPICS ARE BETTER DISCUSSED PRIVATELY, OUTSIDE OF THE
11:43AM 7 PRESENCE OF OTHER JURORS SUCH THAT THERE MIGHT NOT BE ANY OTHER
11:43AM 8 INFLUENCE.

11:43AM 9 SO, MR. COOPERSMITH, DO YOU HAVE SOME QUESTIONS?

11:43AM 10 MR. COOPERSMITH: YES. THANK YOU, YOUR HONOR.

11:43AM 11 ARE YOU COMFORTABLE IF I REMOVE MY MASK?

11:43AM 12 PROSPECTIVE JUROR: PARDON ME?

11:43AM 13 MR. COOPERSMITH: ARE YOU COMFORTABLE IF I TAKE MY
11:43AM 14 MASK OFF?

11:43AM 15 PROSPECTIVE JUROR: SURE.

11:43AM 16 MR. COOPERSMITH: OKAY. THANK YOU.

11:43AM 17 FIRST OF ALL, AS JUDGE DAVILA TOLD YOU, THANK YOU FOR
11:43AM 18 COMING HERE TODAY, AND I APPRECIATE YOUR TIME.

11:43AM 19 WE JUST WANT TO TALK ABOUT THIS ISSUE THAT WE WERE JUST
11:43AM 20 TALKING ABOUT IN THE COURTROOM. AND IT SOUNDS LIKE YOU'RE
11:43AM 21 AWARE OF A ROMANTIC RELATIONSHIP BETWEEN MR. BALWANI AND
11:43AM 22 MS. HOLMES.

11:43AM 23 PROSPECTIVE JUROR: UH-HUH, YEAH. I THINK FIANCE,
11:43AM 24 RIGHT?

11:43AM 25 MR. COOPERSMITH: IS THAT WHAT YOU UNDERSTAND?

11:43AM 1 PROSPECTIVE JUROR: YES.

11:43AM 2 MR. COOPERSMITH: OKAY. ARE YOU ALSO AWARE OF THE
11:43AM 3 OUTCOME OF MS. HOLMES'S CASE?

11:43AM 4 TO PUT IT ANOTHER WAY, DO YOU KNOW WHAT HAPPENED TO
11:43AM 5 MS. HOLMES?

11:43AM 6 PROSPECTIVE JUROR: THEY ACCUSED HER OF THE FRAUD
11:43AM 7 INFORMATION.

11:43AM 8 MR. COOPERSMITH: OKAY. WHEN YOU SAY "FRAUD," WHAT
11:43AM 9 DO YOU MEAN BY THAT?

11:43AM 10 PROSPECTIVE JUROR: AT FIRST SHE CREATED A COMPANY
11:43AM 11 AND THEY SAID THEY HAVE A MACHINE TO HAVE A BLOOD TEST FOR A
11:43AM 12 TEST FOR THE CANCER, AND THEN THEY SAY IT'S NOT TRUE BECAUSE --
11:43AM 13 YEAH, THEY ASK FOR A LOT OF MONEY FROM THE INVESTORS, AND THEN
11:43AM 14 THE OTHER SHAREHOLDERS.

11:43AM 15 MR. COOPERSMITH: OKAY.

11:43AM 16 ARE YOU AWARE OF MS. HOLMES HAVING A SEPARATE TRIAL?

11:43AM 17 PROSPECTIVE JUROR: NO. I THINK THEY'RE TOGETHER.

11:43AM 18 MR. COOPERSMITH: OKAY. YOU THINK MS. HOLMES IS
11:43AM 19 GOING TO BE AT THIS TRIAL?

11:43AM 20 PROSPECTIVE JUROR: YEAH, I THINK SO. THEY GO
11:43AM 21 TOGETHER.

11:43AM 22 MR. COOPERSMITH: OKAY. THANK YOU FOR THAT.

11:43AM 23 SO LET'S TALK ABOUT THE RELATIONSHIP. WHAT DO YOU KNOW
11:43AM 24 ABOUT THE RELATIONSHIP BETWEEN MS. HOLMES AND MR. BALWANI IN
11:43AM 25 TERMS OF THE ROMANTIC RELATIONSHIP? WHAT DO YOU KNOW ABOUT

11:43AM 1 THAT?

11:43AM 2 PROSPECTIVE JUROR: WELL, MY HUSBAND TOLD ME,
11:43AM 3 BECAUSE WE KNOW THIS CASE BACK TO A FEW YEARS AGO, YEAH. AND
11:43AM 4 MY FAMILY TALKED ABOUT IT. AND THEN MY HUSBAND JUST TOLD ME,
11:43AM 5 TOLD ME THEY ARE LOVERS, THEY ARE FIANCE.

11:43AM 6 MR. COOPERSMITH: OKAY. AND ARE YOU AWARE OF ANY
11:43AM 7 DIFFICULTIES OF ANY SORT IN THE RELATIONSHIP BETWEEN
11:43AM 8 MR. BALWANI AND MS. HOLMES?

11:43AM 9 PROSPECTIVE JUROR: NO, I DON'T.

11:43AM 10 MR. COOPERSMITH: OKAY.

11:43AM 11 PROSPECTIVE JUROR: DO THEY HAVE A KID?

11:43AM 12 MR. COOPERSMITH: YOU KNOW, I WISH I COULD ANSWER
11:43AM 13 YOUR QUESTIONS, BUT I CAN'T REALLY TELL YOU.

11:43AM 14 PROSPECTIVE JUROR: OKAY.

11:43AM 15 MR. COOPERSMITH: RIGHT.

11:43AM 16 PROSPECTIVE JUROR: BUT I HEARD.

11:43AM 17 MR. COOPERSMITH: ALL RIGHT. IS THAT WHAT YOU
11:43AM 18 UNDERSTAND?

11:43AM 19 PROSPECTIVE JUROR: UH-HUH.

11:43AM 20 MR. COOPERSMITH: OKAY.

11:43AM 21 NOW, YOU USED THE WORD "FRAUD."

11:43AM 22 DO YOU THINK, IF YOU WERE SEATED AS A JUROR IN THIS CASE,
11:43AM 23 COULD YOU PUT YOUR KNOWLEDGE OR OPINION ABOUT FRAUD OUT OF YOUR
11:43AM 24 MIND AND JUST FOCUS ON THE EVIDENCE IN THE CASE? BECAUSE
11:43AM 25 THAT'S WHAT JUDGE DAVILA WOULD TELL EVERY JUROR THAT THEY WOULD

11:43AM 1 HAVE TO DO, AND I'M JUST WONDERING IF YOU'RE CAPABLE OF DOING
11:43AM 2 THAT?

11:43AM 3 PROSPECTIVE JUROR: TO BE HONEST --

11:43AM 4 MR. COOPERSMITH: YES, THAT'S WHAT WE WANT.

11:43AM 5 PROSPECTIVE JUROR: I DON'T KNOW. BECAUSE THE FIRST
11:43AM 6 TIME WHEN I SAW ELIZABETH HOLMES, I JUST DON'T FEEL
11:43AM 7 COMFORTABLE. I JUST THINK SHE'S LYING.

11:43AM 8 MR. COOPERSMITH: OKAY.

11:43AM 9 PROSPECTIVE JUROR: JUST FROM MY INSTINCT, I JUST
11:43AM 10 FEEL LIKE THAT.

11:43AM 11 YEAH, AT THAT TIME SHE HAS NO TRIAL CASE, RIGHT? AT THAT
11:43AM 12 TIME EVERYBODY SAYS, SHE'S SO GOOD. I THINK IT WAS 2013 OR
11:43AM 13 2015.

11:43AM 14 MR. COOPERSMITH: OKAY.

11:43AM 15 PROSPECTIVE JUROR: SO I JUST DON'T SAY WHAT SHE
11:43AM 16 SAYS IS TRUE.

11:43AM 17 MR. COOPERSMITH: OKAY. AND SINCE YOU DON'T BELIEVE
11:43AM 18 MS. HOLMES OR YOU --

11:43AM 19 PROSPECTIVE JUROR: YEAH.

11:43AM 20 MR. COOPERSMITH: -- HOW DOES THAT AFFECT YOUR
11:43AM 21 BELIEF ABOUT MR. BALWANI?

11:43AM 22 PROSPECTIVE JUROR: BECAUSE THEY ARE LOVERS. HE'S
11:43AM 23 HER FIANCE. I THINK THEY HAVE A KID.

11:43AM 24 MR. COOPERSMITH: OKAY. AND DO YOU THINK THAT YOU
11:43AM 25 COULD JUST PUT OUT OF YOUR MIND ANYTHING ABOUT THAT AND JUST

11:43AM 1 FOCUS ON THE EVIDENCE THAT IS PRESENTED IN THE COURTROOM AND
11:43AM 2 ONLY USE THAT EVIDENCE TO DECIDE ABOUT MR. BALWANI'S GUILT OR
11:43AM 3 INNOCENCE?

11:43AM 4 PROSPECTIVE JUROR: THAT'S WHY I SAY I DON'T KNOW.
11:43AM 5 MR. COOPERSMITH: YOU DON'T KNOW?
11:43AM 6 PROSPECTIVE JUROR: BECAUSE I REALLY THINK THAT THEY
11:43AM 7 ARE GUILTY TO BE HONEST WITH YOU.

11:43AM 8 MR. COOPERSMITH: THAT'S ALL WE WANT. THERE'S NO
11:43AM 9 WRONG ANSWERS. WE JUST APPRECIATE YOUR HONESTY.
11:43AM 10 YOUR HONOR, THAT'S ALL OF THE QUESTIONS I HAVE.
11:43AM 11 THE COURT: OKAY. MR. SCHENK, ANYTHING?
11:43AM 12 MR. SCHENK: NO. THANK YOU.
11:43AM 13 THE COURT: THAT'S ALL. SO YOU CAN LEAVE TODAY AND
11:43AM 14 THE COURT WILL NOTIFY YOU IF YOU NEED TO COME BACK.
11:43AM 15 PROSPECTIVE JUROR: OKAY.
11:43AM 16 BY THE WAY, I JUST NOTICE THAT MY SON'S GRADUATION DATE IS
11:43AM 17 JUNE 13TH.
11:43AM 18 THE COURT: JUNE 13TH?
11:43AM 19 PROSPECTIVE JUROR: IT'S FOR THE BUSINESS
11:43AM 20 DEPARTMENT, AND JUNE 15TH FOR THE WHOLE SCHOOL.
11:43AM 21 THE COURT: OH, SO THE BUSINESS GOES FIRST?
11:43AM 22 PROSPECTIVE JUROR: YEAH. SO I DON'T KNOW IF I'M
11:43AM 23 SELECTED TO BE A JUROR, CAN I BE EXCUSED FOR A FEW DAYS OR
11:43AM 24 WHAT?
11:43AM 25 THE COURT: THANK YOU FOR LETTING ME KNOW THAT.

11:43AM 1 JUNE 13TH YOU SAID?

11:43AM 2 PROSPECTIVE JUROR: AND 15TH IS THE WHOLE SCHOOL.

11:43AM 3 THE COURT: RIGHT. IS HE GOING TO STAY -- ARE YOU
11:43AM 4 PLANNING ON STAYING FOR THE WHOLE SCHOOL AS WELL?

11:43AM 5 PROSPECTIVE JUROR: YES. AND TO BE HONEST WITH YOU,
11:43AM 6 WE HAVE NOT SEEN OUR PARENTS FOR THREE YEARS BECAUSE OF COVID.
11:43AM 7 OUR PLAN IS AFTER HIS GRADUATION DAY WE'LL GO TO CANADA.

11:43AM 8 THE COURT: OH.

11:43AM 9 PROSPECTIVE JUROR: BUT I DON'T KNOW IF THE CASE
11:43AM 10 WILL LAST FOR HOW LONG, BECAUSE IT'S THE ONLY TIME THAT WE CAN
11:43AM 11 GO IS IN JUNE, THE END OF JUNE OR JULY.

11:43AM 12 THE COURT: OKAY. ALL RIGHT.

11:43AM 13 PROSPECTIVE JUROR: THANK YOU.

11:43AM 14 THE COURT: CONGRATULATIONS.

11:43AM 15 PROSPECTIVE JUROR: THANK YOU. HAVE A GOOD WEEKEND.

11:43AM 16 THE COURT: YOU AS WELL.

11:43AM 17 MR. SCHENK: THANK YOU.

11:43AM 18 MR. COOPERSMITH: THANK YOU.

11:43AM 19 PROSPECTIVE JUROR: OKAY. BYE.

11:43AM 20 (PROSPECTIVE JUROR NUMBER 10 IS NOT PRESENT.)

11:43AM 21 THE COURT: DO WE WANT TO HAVE DISCUSSION ABOUT
11:43AM 22 JURORS HERE OR ON THE RECORD THERE? I'M HAPPY TO --

11:43AM 23 MR. SCHENK: NO PREFERENCE.

11:43AM 24 THE COURT: WHY DON'T WE TALK ABOUT -- JUROR 10.
11:43AM 25 ANY THOUGHTS ABOUT JUROR 10?

11:43AM 1 WE'RE BACK ON THE RECORD OUTSIDE OF JUROR 10 AND JUST
11:43AM 2 COUNSEL.

11:43AM 3 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 4 MAYBE IT'S HELPFUL TO TALK A MINUTE AS THEY COME HERE.
11:43AM 5 FOR BOTH THE TWO JURORS WE SAW, NUMBER 10 AND 34, WE THINK THEY
11:43AM 6 NEED TO BE STRUCK BASED ON THEIR ANSWERS.

11:43AM 7 MR. SCHENK: YOUR HONOR, NUMBER 10 THE GOVERNMENT
11:43AM 8 AGREES SHE SAID I REALLY THINK THEY'RE GUILTY, AND IT SEEMS
11:43AM 9 SHE'S REACHED A CONCLUSION BASED ON THE STATE OF THE EVIDENCE
11:43AM 10 AND NOT JUST BASED ON HER THOUGHTS.

11:43AM 11 AND FOR NUMBER 34 I TRIED TO DRILL DOWN ON WHETHER HIS
11:43AM 12 KNOWLEDGE, THAT HE WOULD CARRY FORWARD WAS KNOWLEDGE OF THE WAY
11:43AM 13 IN HIS EXPERIENCE RELATIONSHIPS WORK, WHICH I THINK IS
11:43AM 14 COMPLETELY APPROPRIATE FOR A JUROR TO BRING INTO A DELIBERATION
11:43AM 15 ROOM VERSUS THE CONVICTION ON MS. HOLMES BEING IMPUTED TO
11:43AM 16 MR. BALWANI BASED ON THE RELATIONSHIP, AND I THINK THAT THE
11:43AM 17 ANSWER HE GAVE DOES PROVIDE THE GOVERNMENT A LITTLE BIT OF A
11:43AM 18 CONCERN THAT HE'S GOING TO FIND OR AT LEAST BEGIN THE TRIAL
11:43AM 19 THINKING THAT MR. BALWANI IS GUILTY BECAUSE OF THE WAY
11:43AM 20 RELATIONSHIPS WORK IN HIS MIND AND THE KNOWLEDGE OF THE
11:43AM 21 CONVICTION. I THINK YOU REALLY WOULD HAVE TO SEPARATE THE TWO
11:43AM 22 IN A WAY THAT I'M NOT SURE THAT HE COULD OR WAS HONEST WITH US
11:43AM 23 AND SAID HE HAD CONCERNS THAT HE COULD.

11:43AM 24 SO FOR THAT REASON THE GOVERNMENT WOULD ALSO AGREE TO
11:43AM 25 EXCUSE 34.

11:43AM 1 THE COURT: ANY OBJECTION?

11:43AM 2 MR. COOPERSMITH: NO, YOUR HONOR.

11:43AM 3 THE COURT: ALL RIGHT. 34 IS EXCUSED. I HAD

11:43AM 4 SIMILAR OBSERVATIONS AND NOTES.

11:43AM 5 SO 34 IS EXCUSED FOR CAUSE AS WELL.

11:43AM 6 SO 10 AND 34.

11:43AM 7 THE CLERK: WOULD YOU LIKE 80?

11:43AM 8 THE COURT: NEXT IS -- IS IT 80? YES.

11:43AM 9 THE CLERK: OKAY.

11:43AM 10 (PROSPECTIVE JUROR NUMBER 80 IS PRESENT.)

11:43AM 11 THE COURT: GOOD MORNING.

11:43AM 12 PROSPECTIVE JUROR: GOOD MORNING.

11:43AM 13 THE COURT: PLEASE HAVE A SEAT. THANK YOU FOR

11:43AM 14 MEETING WITH US THIS MORNING.

11:43AM 15 WE JUST WANTED TO FOLLOW UP ON A COUPLE OF THE QUESTIONS

11:43AM 16 THAT YOU WERE ASKED OUTSIDE, AND WE WANTED TO DO THIS OUTSIDE

11:43AM 17 OF THE PRESENCE OF OTHER JURORS SO WE COULD HAVE A PRIVATE

11:43AM 18 CONVERSATION ABOUT THAT.

11:43AM 19 MR. COOPERSMITH.

11:43AM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 21 ARE YOU COMFORTABLE IF I REMOVE MY MASK, SIR?

11:43AM 22 PROSPECTIVE JUROR: IT'S UP TO YOU.

11:43AM 23 MR. COOPERSMITH: IT'S UP TO ME?

11:43AM 24 I'LL LEAVE IT ON. IT SOUNDS LIKE YOU MAY BE MORE

11:43AM 25 COMFORTABLE THAT WAY.

11:43AM 1 PROSPECTIVE JUROR: IT'S OKAY. YOU CAN TAKE IT OFF.

11:43AM 2 MR. COOPERSMITH: ARE YOU SURE?

11:43AM 3 PROSPECTIVE JUROR: YES.

11:43AM 4 MR. COOPERSMITH: THANK YOU. IT'S HARD TO TALK WITH

11:43AM 5 THE MASK.

11:43AM 6 SO, FIRST OF ALL, THANK YOU FOR YOUR TIME, AND I

11:43AM 7 APPRECIATE YOU TAKING EVEN MORE TIME TODAY AND COMING BACK

11:43AM 8 HERE.

11:43AM 9 AS I SAID IN THE COURTROOM, THERE'S NO WRONG OR RIGHT

11:43AM 10 ANSWER, AND WE'RE TRYING TO GET WHAT PEOPLE REALLY THINK, AND

11:43AM 11 YOU'RE ENTITLED TO THINK WHATEVER YOU WANT, WE JUST WANT TO

11:43AM 12 MAKE SURE WE KNOW WHAT THAT IS.

11:43AM 13 PROSPECTIVE JUROR: OKAY.

11:43AM 14 MR. COOPERSMITH: SO MY FIRST QUESTION IS THAT IT

11:43AM 15 SOUNDS LIKE YOU'RE AWARE OF A ROMANTIC RELATIONSHIP BETWEEN

11:43AM 16 MS. HOLMES AND MR. BALWANI?

11:43AM 17 PROSPECTIVE JUROR: YES, I HEARD THE NEWS, BUT I

11:43AM 18 DIDN'T READ THE DETAIL.

11:43AM 19 MR. COOPERSMITH: OKAY. ARE YOU ALSO AWARE OF THE

11:43AM 20 OUTCOME OF MS. HOLMES'S SEPARATE CASE?

11:43AM 21 PROSPECTIVE JUROR: NO. I DON'T PAY MUCH ATTENTION,

11:43AM 22 BUT I KNOW THERE'S SOMETHING GOING ON, BUT IT'S NOT.

11:43AM 23 MR. COOPERSMITH: OKAY. WHEN YOU SAY, "THERE'S

11:43AM 24 SOMETHING GOING ON," WHAT DO YOU THINK SOMETHING IS GOING ON?

11:43AM 25 PROSPECTIVE JUROR: LIKE THERE'S A TRIAL, AND IT'S

11:43AM 1 STILL GOING ON.

11:43AM 2 MR. COOPERSMITH: DO YOU KNOW WHAT HAPPENED TO THAT

11:43AM 3 TRIAL?

11:43AM 4 PROSPECTIVE JUROR: THE PREVIOUS ONE?

11:43AM 5 MR. COOPERSMITH: RIGHT.

11:43AM 6 PROSPECTIVE JUROR: I DON'T KNOW.

11:43AM 7 MR. COOPERSMITH: YOU DON'T KNOW?

11:43AM 8 PROSPECTIVE JUROR: IN MY MIND I THINK IT'S NOT

11:43AM 9 FINISHED.

11:43AM 10 MR. COOPERSMITH: OKAY. THANK YOU.

11:43AM 11 AND WITH REGARD TO THE RELATIONSHIP, WHAT DO YOU KNOW

11:43AM 12 ABOUT THE RELATIONSHIP BETWEEN MR. BALWANI AND MS. HOLMES?

11:43AM 13 PROSPECTIVE JUROR: I DON'T KNOW THE DETAILS, BUT I

11:43AM 14 KNOW THEY HAVE SOME RELATIONSHIP; THAT THEY HAVE FUN TIME

11:43AM 15 TOGETHER ON THE WEEKEND OR ON VACATION, OR SOMETHING LIKE THAT.

11:43AM 16 MR. COOPERSMITH: OKAY. AND DO YOU KNOW OF ANYTHING

11:43AM 17 ABOUT THAT RELATIONSHIP THAT YOU THINK WOULD AFFECT YOUR

11:43AM 18 ABILITY TO BE FAIR OR ANYTHING LIKE THAT?

11:43AM 19 PROSPECTIVE JUROR: I'LL BE FAIR BECAUSE I THINK

11:43AM 20 THAT THIS IS JUST THE NEWS.

11:43AM 21 I DON'T THINK THIS IS SETTLED BECAUSE IF SOMEBODY SAYS

11:43AM 22 THIS AND SOMEBODY SAYS THAT, I THINK AS A JURY WE NEED TO KNOW

11:43AM 23 ALL OF THE DETAILS, AND FOR ME I DON'T KNOW ANY DETAILS.

11:43AM 24 I JUST BRIEFLY HEARD OF THE THING.

11:43AM 25 MR. COOPERSMITH: OKAY. AND IS THERE ANYTHING THAT

11:43AM 1 YOU'VE LEARNED ABOUT THIS CASE THAT WOULD MAKE YOU LOOK AT
11:43AM 2 MR. BALWANI AS ANYTHING OTHER THAN PRESUMED INNOCENT?

11:43AM 3 PROSPECTIVE JUROR: I THINK AT THIS STAGE I DON'T
11:43AM 4 KNOW THE DETAILS. I DON'T KNOW THE CONCRETE EVIDENCE. I DON'T
11:43AM 5 KNOW LIKE THE BEYOND A REASONABLE DOUBT. I DON'T KNOW WHAT IS
11:43AM 6 A REASONABLE, THE STANDARDS, HOW IS IT REASONABLE AND WHAT IS
11:43AM 7 NOT REASONABLE.

11:43AM 8 SO I THINK THERE'S TOO MANY THINGS TO LEARN AND STUDY IN
11:43AM 9 THIS CASE. IT'S TOO EARLY.

11:43AM 10 MR. COOPERSMITH: THANK YOU, SIR. I APPRECIATE YOUR
11:43AM 11 ANSWERS AND THAT'S HELPFUL, AND THAT'S WHAT THIS PROCESS IS
11:43AM 12 ABOUT.

11:43AM 13 SO THANK YOU.

11:43AM 14 I DON'T HAVE ANYTHING FURTHER, YOUR HONOR.

11:43AM 15 THE COURT: MR. SCHENK?

11:43AM 16 MR. SCHENK: NO, YOUR HONOR. THANK YOU.

11:43AM 17 THE COURT: THANK YOU, SIR.

11:43AM 18 THE COURT WILL LET YOU GO TODAY, AND THE COURT WILL LET
11:43AM 19 YOU KNOW IF AND WHEN YOU CAN COME BACK.

11:43AM 20 PROSPECTIVE JUROR: THANK YOU VERY MUCH.

11:43AM 21 THE COURT: THANK YOU.

11:43AM 22 (PROSPECTIVE JUROR NUMBER 80 IS NOT PRESENT.)

11:43AM 23 THE COURT: THE RECORD SHOULD REFLECT THAT NUMBER 80
11:43AM 24 HAS LEFT.

11:43AM 25 MR. COOPERSMITH: WE'RE NOT MOVING TO STRIKE NUMBER

11:43AM 1 80 AT THIS TIME.

11:43AM 2 MR. SCHENK: WE AGREE THERE'S NOT A BASIS.

11:43AM 3 THE COURT: ALL RIGHT. 82.

11:43AM 4 THE CLERK: IS HE JUST RELEASED OR HAVE WE EXCUSED
11:43AM 5 HIM?

11:43AM 6 THE COURT: HE'S JUST RELEASED AND NOT EXCUSED.
11:43AM 7 HE'S SUBJECT TO RECALL.

11:43AM 8 THE CLERK: OKAY. 82?

11:43AM 9 THE COURT: YES.

11:43AM 10 (PROSPECTIVE JUROR NUMBER 82 IS PRESENT.)

11:43AM 11 THE COURT: GOOD MORNING.

11:43AM 12 PROSPECTIVE JUROR: GOOD MORNING.

11:43AM 13 THE COURT: PLEASE HAVE A SEAT.

11:43AM 14 THANK YOU FOR YOUR PATIENCE. APOLOGIZE ON BEHALF OF THE
11:43AM 15 COURT AND THE LAWYERS FOR BRINGING YOU BACK. IT WILL BE VERY
11:43AM 16 BRIEF AS YOU'VE SEEN.

11:43AM 17 WE'VE BROUGHT YOU BACK HERE BECAUSE WE WANTED TO FOLLOW UP
11:43AM 18 ON SOME QUESTIONS ABOUT YOUR ANSWER REGARDING THE RELATIONSHIP
11:43AM 19 HERE, AND COUNSEL WILL ASK YOU THOSE QUESTIONS.

11:43AM 20 WE'RE DOING THIS PRIVATELY BECAUSE WE WANT TO MAKE SURE
11:43AM 21 THAT THERE'S -- WHAT WE SAY IS NOT HEARD BY OTHERS OR SUCH THAT
11:43AM 22 IT COULD IN ANY WAY IMPACT THE STATEMENTS AND COMMENTS OF SOME
11:43AM 23 OF YOUR OTHER JURORS, YOUR COLLEAGUE JURORS.

11:43AM 24 PROSPECTIVE JUROR: OKAY.

11:43AM 25 THE COURT: SO THAT'S WHAT WE'RE DOING HERE.

11:43AM 1 MR. COOPERSMITH IS GOING TO START.

11:43AM 2 CAN HE TAKE HIS MASK OFF?

11:43AM 3 PROSPECTIVE JUROR: SURE.

11:43AM 4 THE COURT: ARE YOU COMFORTABLE WITH THAT? IS THAT

11:43AM 5 OKAY?

11:43AM 6 PROSPECTIVE JUROR: THAT'S FINE.

11:43AM 7 THE COURT: MR. COOPERSMITH.

11:43AM 8 MR. COOPERSMITH: THANK YOU.

11:43AM 9 AS JUDGE DAVILA SAID, THANK YOU FOR COMING HERE. WE

11:43AM 10 APPRECIATE IT. WE'RE TRYING TO UNDERSTAND WHO ARE THE RIGHT

11:43AM 11 JURORS FOR THIS CASE.

11:43AM 12 PROSPECTIVE JUROR: OKAY.

11:43AM 13 MR. COOPERSMITH: IT DOESN'T SAY ANYTHING ABOUT YOU.

11:43AM 14 AND AS YOU WERE HEARING OUTSIDE IN THE COURTROOM WITH

11:43AM 15 EVERYBODY, I'M INTERESTED IN PARTICULAR ABOUT THE RELATIONSHIP

11:43AM 16 WITH MR. BALWANI AND MS. HOLMES, AND IT SOUNDS LIKE YOU KNOW

11:43AM 17 SOMETHING ABOUT THAT?

11:43AM 18 PROSPECTIVE JUROR: I JUST HEARD THAT SHE ALLEGED

11:43AM 19 ABUSE.

11:43AM 20 MR. COOPERSMITH: OKAY. AND ANY MORE SPECIFICS

11:43AM 21 ABOUT WHAT SHE ALLEGED?

11:43AM 22 PROSPECTIVE JUROR: NO, I DID NOT FOLLOW THAT TRIAL

11:43AM 23 WHATSOEVER. I JUST KNOW SHE ALLEGED THAT.

11:43AM 24 MR. COOPERSMITH: OKAY. DO YOU HAVE ANY

11:43AM 25 UNDERSTANDING OF, LIKE, WHY SHE ALLEGED THAT OR WHEN SHE

11:43AM 1 ALLEGED THAT?

11:43AM 2 PROSPECTIVE JUROR: I DON'T KNOW THE TIMELINE OF
11:43AM 3 THAT CASE. I DIDN'T FOLLOW IT CLOSELY.

11:43AM 4 I KNOW IT'S GOING TO BE PORTRAYED IN THE HULU SHOW.
11:43AM 5 THAT'S KIND OF THE EXTENT OF IT.

11:43AM 6 MR. COOPERSMITH: OKAY. DO YOU KNOW WHAT THE
11:43AM 7 OUTCOME OF THE OTHER CASE WAS?

11:43AM 8 PROSPECTIVE JUROR: NO IDEA.

11:43AM 9 MR. COOPERSMITH: YOU DON'T KNOW WHAT HAPPENED?

11:43AM 10 PROSPECTIVE JUROR: HUH-UH.

11:43AM 11 MR. COOPERSMITH: OKAY. WITH REGARD TO THE ABUSE
11:43AM 12 ALLEGATION, DO YOU HAVE ANY REASON TO BELIEVE ONE WAY OR
11:43AM 13 ANOTHER WHETHER THAT ALLEGATION IS TRUE?

11:43AM 14 PROSPECTIVE JUROR: NO. I DIDN'T FOLLOW UP ON THAT
11:43AM 15 CASE. I DON'T KNOW THE DETAILS SURROUNDING IT, SO I COULDN'T
11:43AM 16 MAKE A JUDGMENT CALL ON IT.

11:43AM 17 MR. COOPERSMITH: IS THERE ANYTHING ABOUT YOU, YOUR
11:43AM 18 KNOWLEDGE, YOUR WORK, YOUR BACKGROUND THAT WOULD MAKE YOU
11:43AM 19 BELIEVE A WOMAN WHO CLAIMS THAT A MAN ABUSED HER ONE WAY OR THE
11:43AM 20 OTHER?

11:43AM 21 PROSPECTIVE JUROR: WELL, I HAVE A BACKGROUND IN
11:43AM 22 JOURNALISM SO MY TRAINING BASICALLY -- I MEAN, NO. IF I DON'T
11:43AM 23 HAVE THE FACTS OR SOMETHING HAS BEEN PROVEN IN COURT, I DON'T
11:43AM 24 REALLY HOLD THAT IN ANY WAY.

11:43AM 25 MR. COOPERSMITH: OKAY.

11:43AM 1 AND IF YOU WERE SITTING AT TRIAL AND YOU WERE, YOU KNOW,
11:43AM 2 EVERY DAY, DAY AFTER DAY FOR SOME MONTHS, UNFORTUNATELY, YOU
11:43AM 3 WOULD BE LOOKING AT MR. BALWANI WHO IS SITTING AT COUNSEL
11:43AM 4 TABLE, WOULD YOU BE LOOKING AT HIM AS AN ALLEGED ABUSER OR AS A
11:43AM 5 PERSON WHO IS PRESUMED INNOCENT?

11:43AM 6 PROSPECTIVE JUROR: NOT AS AN ABUSER. JUST AS A
11:43AM 7 PERSON WHO IS PRESUMED INNOCENT UNTIL PROVEN GUILTY.

11:43AM 8 MR. COOPERSMITH: COULD YOU PUT OUT OF YOUR MIND
11:43AM 9 LIKE THE ALLEGATION OF ABUSE HAS ANY RELEVANCE? COULD YOU PUT
11:43AM 10 IT OUT OF YOUR MIND THAT THAT EVEN HAPPENED?

11:43AM 11 PROSPECTIVE JUROR: DEFINITELY, BECAUSE I DON'T KNOW
11:43AM 12 THE CIRCUMSTANCES.

11:43AM 13 MR. COOPERSMITH: OKAY. AND YOU THINK WITHOUT THE
11:43AM 14 CIRCUMSTANCES IT WOULD BE UNFAIR TO HOLD THAT AGAINST
11:43AM 15 MR. BALWANI?

11:43AM 16 PROSPECTIVE JUROR: YES.

11:43AM 17 MR. COOPERSMITH: ANYTHING WE SHOULD KNOW? ANYTHING
11:43AM 18 ELSE WE SHOULD KNOW IN TERMS OF YOUR ABILITY TO BE FAIR AND
11:43AM 19 IMPARTIAL AS A JUROR?

11:43AM 20 PROSPECTIVE JUROR: NO.

11:43AM 21 MR. COOPERSMITH: THAT'S ALL OF THE QUESTIONS I
11:43AM 22 HAVE.

11:43AM 23 MR. SCHENK: NO, THANK YOU.

11:43AM 24 THE COURT: YOU CAN LEAVE FOR THE DAY. YOU'LL BE
11:43AM 25 NOTIFIED WHETHER YOU WILL BE NEEDED. HAVE A GREAT WEEKEND.

11:43AM 1 PROSPECTIVE JUROR: THANK YOU. YOU TOO.

11:43AM 2 (PROSPECTIVE JUROR NUMBER 82 IS NOT PRESENT.)

11:43AM 3 THE COURT: MR. COOPERSMITH.

11:43AM 4 MR. COOPERSMITH: SHE ANSWERED THE QUESTIONS VERY
11:43AM 5 WELL AND SHE CLEARLY SAID THAT SHE'S NOT GOING TO HOLD THAT
11:43AM 6 AGAINST -- I'M SORRY.

11:43AM 7 SHE CLEARLY SAID SHE'S NOT GOING TO HOLD THAT AGAINST
11:43AM 8 MR. BALWANI. THAT'S ALL POSITIVE AND ORDINARILY I WOULD NOT BE
11:43AM 9 MOVING.

11:43AM 10 THE ISSUE, THOUGH, IS THAT I JUST THINK THAT GIVEN THE
11:43AM 11 SITUATION HERE, HAVING A JUROR COMING INTO THE CASE KNOWING
11:43AM 12 ABOUT THAT WHEN WE HAVE OTHER JURORS, PLENTY OF OTHER JURORS
11:43AM 13 WHO DON'T KNOW IS I THINK A DANGEROUS THING BECAUSE, AS I SAID
11:43AM 14 IN COURT, THAT WAS THE WHOLE REASON FOR THE SEVERANCE.

11:43AM 15 I DO ACKNOWLEDGE, OF COURSE, THE JUROR'S ANSWERS AND, YOU
11:43AM 16 KNOW, WE ALL HEARD WHAT HAPPENED. SO THAT'S WHAT WE THINK
11:43AM 17 ABOUT THAT.

11:43AM 18 THE COURT: ARE YOU EXERCISING A CAUSE CHALLENGE?

11:43AM 19 MR. COOPERSMITH: YES, JUST BECAUSE WE DON'T THINK
11:43AM 20 KNOWLEDGE OF ABUSE SHOULD COME INTO THE CASE, BUT I DO
11:43AM 21 UNDERSTAND THE COUNTERING ARGUMENT.

11:43AM 22 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OPPOSES THAT
11:43AM 23 CHALLENGE.

11:43AM 24 SHE SAID THAT SHE HAD NO IDEA WHAT HAPPENED IN THE OTHER
11:43AM 25 TRIAL. SHE HAD NO IDEA WHETHER THE ALLEGATION, THE ABUSE

11:43AM 1 ALLEGATION WAS TRUE, HER BACKGROUND IN JOURNALISM SUGGESTED YOU
11:43AM 2 NEED FACTS IN ORDER TO REACH CONCLUSIONS, THAT SHE WOULD LOOK
11:43AM 3 AT MR. BALWANI EVERY DAY AS INNOCENT, THAT SHE COULD DEFINITELY
11:43AM 4 PUT IT OUT OF HER MIND.

11:43AM 5 SO THERE'S NO BASIS TO BELIEVE THAT THIS JUROR WOULD ENTER
11:43AM 6 THE COURTROOM WITH BIAS BASED ON HER KNOWLEDGE OF THE ABUSE
11:43AM 7 ALLEGATION.

11:43AM 8 LET ME JUST SAY A COUPLE OF WORDS. MR. COOPERSMITH HAS
11:43AM 9 MADE THE ARGUMENT REPEATEDLY TO THE COURT THAT ABUSE WAS THE
11:43AM 10 REASON FOR THE SEVERANCE. THAT'S AN OVERSTATEMENT.

11:43AM 11 THE COURT SEVERED BECAUSE DAY AFTER DAY MS. HOLMES WAS
11:43AM 12 GOING TO ACCUSE A CODEFENDANT SITTING IN THE COURTROOM OF
11:43AM 13 ABUSE, MAYBE BLAME HIM FOR THE CRIME. THAT IS A VERY DIFFERENT
11:43AM 14 THING THAN WHAT MR. COOPERSMITH IS CLAIMING WOULD NOW VIOLATE
11:43AM 15 THE WHOLE REASON THE COURT SEVERED THE TWO CASES BY ALLOWING A
11:43AM 16 JUROR WHO IS AWARE OF THE ABUSE ALLEGATIONS TO BE ON THIS JURY.

11:43AM 17 IT IS NOT THE CASE THAT THE COURT SEVER THE TWO TRIALS
11:43AM 18 BECAUSE OF A PASSING REFERENCE TO AN ABUSE AS THIS JUROR HAS
11:43AM 19 INDICATED. IT WAS ON THE CONTRARY, BECAUSE THE COURT FOUND AN
11:43AM 20 IRRECONCILABLE DIFFERENCE BETWEEN THE DEFENSES THAT WOULD BE
11:43AM 21 TRIED OR PROPOUNDED BY TWO DEFENDANTS SIMULTANEOUSLY.

11:43AM 22 EVEN THE KINDS OF CASES THAT THE DEFENSE CITED IN ITS
11:43AM 23 MOTION TO SEVER WERE NOT 403 BASED SORT OF ALLEGATIONS OR TOO
11:43AM 24 PREJUDICIAL TO BE SPOKEN. THEY WERE THE IRRECONCILABLE TRIAL
11:43AM 25 DIFFERENCES AS A BASIS TO SEVER.

11:43AM 1 SO IT IS NOT THE CASE THAT THE COURT, BY ALLOWING A JUROR
11:43AM 2 LIKE JUROR 82 TO SIT IN THIS TRIAL, WOULD BE REVERSING OR
11:43AM 3 ISSUING AN ORDER CONTRARY TO THE BASIS FOR SEVERANCE
11:43AM 4 PREVIOUSLY. THERE'S A SIGNIFICANT DISTINCTION BETWEEN ALLOWING
11:43AM 5 A JUROR LIKE 82 TO SIT IN THIS TRIAL AND THE BASIS FOR
11:43AM 6 SEVERANCE ORIGINALLY.

11:43AM 7 SO THE COURT SHOULD DENY.

11:43AM 8 THE COURT: THANK YOU.

11:43AM 9 MR. COOPERSMITH: YOUR HONOR, THE ONLY THING I WOULD
11:43AM 10 ADD IS THAT WHEN THE JURY -- WHEN THE TRIAL IS OVER AND THE
11:43AM 11 EVIDENCE IS IN AND THEN THE JURORS ARE DELIBERATING, WHAT WOULD
11:43AM 12 THE COURT DO, IF ANYTHING, TO MAKE SURE THAT IN THE COURSE OF
11:43AM 13 DELIBERATIONS A JUROR WOULDN'T SAY, WELL, YOU KNOW, I DO KNOW
11:43AM 14 THAT HE WAS ALSO ACCUSED OF ABUSE, RIGHT?

11:43AM 15 I MEAN, THERE WILL BE EVIDENCE IN THIS CASE WHERE I
11:43AM 16 CERTAINLY BELIEVE THAT THERE ARE CERTAIN EMAILS THAT
11:43AM 17 MR. BALWANI SENT THAT WERE NOT THAT NICE. HE WAS SOMETIMES A
11:43AM 18 DEMANDING BOSS. THAT EVIDENCE WILL COME IN.

11:43AM 19 TO HAVE A JUROR IN DELIBERATIONS -- WE DON'T HAVE ANY
11:43AM 20 CONTROL AT ALL WHAT THEY TALK ABOUT. IF SOMEONE WANTS TO BRING
11:43AM 21 THAT INTO THE CASE, THEN ALL OF THE OTHER JURORS WILL KNOW.

11:43AM 22 THAT'S KIND OF REALLY THE HEART OF THE REASON WHY I HAVE
11:43AM 23 CONCERN.

11:43AM 24 EVEN THOUGH I DO ACKNOWLEDGE, MR. SCHENK IS RIGHT ABOUT
11:43AM 25 THE -- AND I ACKNOWLEDGE THE ANSWER, BUT THAT'S THE CONCERN

11:43AM 1 THAT I HAVE.

11:43AM 2 THE COURT: I AGREE. IT SOUNDS LIKE WE'RE IN
11:43AM 3 AGREEMENT HERE, OR AT LEAST MADE THE OBSERVATIONS. SHE WAS
11:43AM 4 VERY FORTHRIGHT.

11:43AM 5 AND ONE THING I WILL NOTE FOR THE RECORD IS HER DEMEANOR.
11:43AM 6 SHE WAS -- HER ANSWERS WERE CRISP. THEY QUICKLY FOLLOWED YOUR
11:43AM 7 QUESTIONS, INCLUDING HER DENIALS THAT IT'S NOT GOING TO AFFECT
11:43AM 8 ME.

11:43AM 9 AND SHE SAID I'M A JOURNALIST, I NEED TO SEE EVIDENCE
11:43AM 10 BEFORE I CAN EVEN WRITE, I THINK IS WHAT SHE WAS INFERRING.

11:43AM 11 AND HERE SHE TOLD US SHE COULD PRESUME INNOCENCE, AND I
11:43AM 12 UNDERSTAND THAT.

11:43AM 13 AND I DIDN'T READ HER 2.15, BUT MY SENSE IS THAT SHE TOLD
11:43AM 14 US YESTERDAY THAT SHE WOULD FOLLOW THE INSTRUCTIONS OF THE
11:43AM 15 COURT.

11:43AM 16 2.15 WILL BE READ. AND I THINK THAT WOULD DO ABOUT AS
11:43AM 17 MUCH AS WE CAN TO ABOUT INFORMING A JURY ABOUT WHAT THEY MAY
11:43AM 18 NOT DISCUSS IN A CASE.

11:43AM 19 AND YOU'RE RIGHT, WE CAN'T GO IN THERE WITH THEM. WE'RE
11:43AM 20 NOT REFEREES WITH THEIR DISCUSSION. THEY'LL DO WHAT THEY DO
11:43AM 21 GUIDED BY THE INSTRUCTIONS AND THE PRESUMPTION IS THAT THE
11:43AM 22 JURORS FOLLOW THE INSTRUCTIONS OF THE COURT.

11:43AM 23 SO THAT'S THE PROPHYLACTIC MEASURES THAT THE COURT CAN AND
11:43AM 24 WILL TAKE IN THE CASE.

11:43AM 25 I'M GOING TO -- IF YOU'RE MAKING A REQUEST TO STRIKE HER

11:43AM 1 FOR CAUSE, I'M GOING TO RESPECTFULLY DECLINE THAT INVITATION.
11:43AM 2 I DO THINK THAT SHE ANSWERED SUCH THAT A CAUSE CHALLENGE IS
11:43AM 3 WARRANTED IF THAT WAS THE REQUEST.

11:43AM 4 MR. COOPERSMITH: THAT WAS THE QUESTION.

11:43AM 5 THE COURT: THANK YOU. 83.

11:43AM 6 (PROSPECTIVE JUROR NUMBER 83 IS PRESENT.)

11:43AM 7 THE COURT: GOOD MORNING. HAVE A SEAT.

11:43AM 8 THANK YOU FOR COMING IN THIS MORNING AND STAYING A LITTLE
11:43AM 9 BIT TODAY. WE WANTED TO FOLLOW UP WITH SOME OF THE QUESTIONS
11:43AM 10 THAT MR. COOPERSMITH MENTIONED OUTSIDE IN JUST A MOMENT AND
11:43AM 11 JUST FOLLOWING UP ON SOME OF THOSE WITH YOU HERE.

11:43AM 12 AND WE'RE SPEAKING WITH YOU PRIVATELY, OUTSIDE OF THE
11:43AM 13 PRESENCE OF THE OTHER PROSPECTIVE JURORS, SO WE DON'T HAVE THEM
11:43AM 14 LISTEN TO ANYTHING THAT MIGHT CAUSE THEM TO CHANGE AN ANSWER OR
11:43AM 15 THINK ABOUT AN ANSWER THAT IS NOT APPROPRIATE.

11:43AM 16 SO MR. COOPERSMITH IS GOING TO BEGIN BY ASKING YOU SOME
11:43AM 17 QUESTIONS.

11:43AM 18 MAY I ASK HIM TO TAKE HIS MASK OFF? DO YOU HAVE A --

11:43AM 19 PROSPECTIVE JUROR: NO, THAT'S FINE.

11:43AM 20 THE COURT: ARE YOU COMFORTABLE WITH THAT?

11:43AM 21 PROSPECTIVE JUROR: YES, THAT'S FINE.

11:43AM 22 THE COURT: MR. COOPERSMITH.

11:43AM 23 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 24 THANK YOU, SIR, FOR COMING BACK HERE.

11:43AM 25 PROSPECTIVE JUROR: SURE.

11:43AM 1 MR. COOPERSMITH: AND TAKING THE TIME. I APPRECIATE
11:43AM 2 THAT.

11:43AM 3 AS I SAID OUT IN THE COURTROOM, THERE'S NO WRONG ANSWERS
11:43AM 4 HERE. WE'RE TRYING TO UNDERSTAND WHAT PEOPLE THINK AND FEEL
11:43AM 5 AND TO UNDERSTAND WHO THE RIGHT JURORS WOULD BE ON THIS CASE.

11:43AM 6 I THINK YOU SAID OR RAISED YOUR HAND AT LEAST TO
11:43AM 7 ACKNOWLEDGE THAT YOU WERE AWARE OF A RELATIONSHIP BETWEEN
11:43AM 8 MR. BALWANI AND MS. HOLMES?

11:43AM 9 PROSPECTIVE JUROR: YES.

11:43AM 10 MR. COOPERSMITH: AND WHAT DO YOU KNOW ABOUT THAT?

11:43AM 11 PROSPECTIVE JUROR: ONLY THAT IT SEEMS THAT I RECALL
11:43AM 12 IN NEWSPAPER ARTICLES THAT I'VE READ MENTIONING THAT THEY HAD A
11:43AM 13 RELATIONSHIP.

11:43AM 14 MR. COOPERSMITH: DO YOU KNOW ANYTHING MORE THAN
11:43AM 15 THAT ABOUT THE RELATIONSHIP?

11:43AM 16 PROSPECTIVE JUROR: IT IMPLIED THAT IT WAS A
11:43AM 17 ROMANTIC RELATIONSHIP.

11:43AM 18 MR. COOPERSMITH: OKAY.

11:43AM 19 PROSPECTIVE JUROR: AND BEYOND THAT I REALLY DON'T
11:43AM 20 KNOW.

11:43AM 21 MR. COOPERSMITH: OKAY. AND NO OTHER KNOWLEDGE OF
11:43AM 22 HOW THE RELATIONSHIP WENT, WHETHER IT WAS SMOOTH OR DIFFICULT
11:43AM 23 OR GOOD OR BAD OR ANYTHING?

11:43AM 24 PROSPECTIVE JUROR: WELL, I UNDERSTAND IT BECAME NOT
11:43AM 25 A GOOD RELATIONSHIP.

11:43AM 1 MR. COOPERSMITH: AND WHAT DO YOU KNOW ABOUT THAT?

11:43AM 2 WHY DO YOU SAY IT DIDN'T BECOME A GOOD RELATIONSHIP?

11:43AM 3 PROSPECTIVE JUROR: WELL, I THINK IT REFERRED TO --

11:43AM 4 I RECALL BEING REFERRED TO THE RELATIONSHIP IN THE PAST TENSE.

11:43AM 5 MR. COOPERSMITH: MEANING IT'S NO LONGER A

11:43AM 6 RELATIONSHIP?

11:43AM 7 PROSPECTIVE JUROR: RIGHT.

11:43AM 8 MR. COOPERSMITH: BUT DO YOU KNOW THE REASON WHY IT

11:43AM 9 WOULD HAVE ENDED IF THAT'S WHAT HAPPENED?

11:43AM 10 PROSPECTIVE JUROR: NO.

11:43AM 11 MR. COOPERSMITH: OKAY. DO YOU KNOW ANYTHING ABOUT

11:43AM 12 THE OUTCOME OF MS. HOLMES'S CASE OR WHAT HAPPENED TO HER?

11:43AM 13 PROSPECTIVE JUROR: WELL, I UNDERSTAND SHE HAD OR

11:43AM 14 RECEIVED A NINE MONTH SENTENCE I BELIEVE IT WAS?

11:43AM 15 MR. COOPERSMITH: OKAY. THAT'S WHAT YOU HEARD?

11:43AM 16 PROSPECTIVE JUROR: THAT'S WHAT I HAVE HEARD.

11:43AM 17 MR. COOPERSMITH: OKAY. AND IS THERE ANYTHING ABOUT

11:43AM 18 THAT UNDERSTANDING THAT WOULD MAKE YOU LESS THAN FAIR AND

11:43AM 19 IMPARTIAL IN THE CASE OF MR. BALWANI?

11:43AM 20 PROSPECTIVE JUROR: WELL, ONLY TO THE EXTENT THAT, I

11:43AM 21 MEAN, I WOULD, I WOULD HAVE THE FEELING THAT THEY HAVE BEEN

11:43AM 22 SOMEHOW WORKING TOGETHER OR HAD HAD THE OPPORTUNITY TO WORK

11:43AM 23 TOGETHER ON WHATEVER IT WAS THAT SHE HAD DONE.

11:43AM 24 MR. COOPERSMITH: OKAY. SO DO YOU LINK THE TWO

11:43AM 25 THINGS, LIKE THERE WAS A ROMANTIC RELATIONSHIP ON THE ONE HAND

11:43AM 1 AND THAT YOU HAVE SOME UNDERSTANDING OF THE OUTCOME OF
11:43AM 2 MS. HOLMES'S CASE? DO YOU LINK THOSE TWO THINGS?

11:43AM 3 PROSPECTIVE JUROR: WELL, YEAH, IF THEY HAD A
11:43AM 4 RELATIONSHIP I WOULD LINK THE TWO.

11:43AM 5 MR. COOPERSMITH: HOW WOULD YOU LINK THE TWO?

11:43AM 6 PROSPECTIVE JUROR: WELL, I WOULD LINK THEM JUST
11:43AM 7 THAT TWO PEOPLE WHO WERE TOGETHER IN A ROMANTIC RELATIONSHIP,
11:43AM 8 AND ESPECIALLY IF THEY'RE INVOLVED IN THE SAME INDUSTRY AND THE
11:43AM 9 SAME BUSINESS, YOU KNOW, WOULD BE SHARING INFORMATION AND
11:43AM 10 DETAILS ABOUT WHAT WAS GOING ON.

11:43AM 11 I MEAN, IT'S HARD TO IMAGINE THAT ONE OF THEM WOULD NOT
11:43AM 12 KNOW WHAT THE OTHER ONE WAS DOING.

11:43AM 13 MR. COOPERSMITH: OKAY. IF YOU WERE SEATED AS A
11:43AM 14 JUROR, THE JUDGE WOULD INSTRUCT YOU THAT WHAT YOU KNOW ABOUT
11:43AM 15 THE OUTCOME OF MS. HOLMES'S CASE HAS NO BEARING ON THIS TRIAL.
11:43AM 16 THAT'S NOTHING SOMETHING THAT A JUROR IS SUPPOSED TO CONSIDER.
11:43AM 17 THAT YOU'RE SUPPOSED TO PUT THAT OUT OF YOUR MIND AND JUST
11:43AM 18 FOCUS ON WHETHER THE GOVERNMENT HAS MET ITS BURDEN TO PROVE
11:43AM 19 MR. BALWANI IS GUILTY BEYOND A REASONABLE DOUBT.

11:43AM 20 DO YOU THINK THAT YOU COULD PUT OUT OF YOUR MIND WHAT YOU
11:43AM 21 JUST TALKED ABOUT WITH THE RELATIONSHIP AND THE FACT THAT YOU
11:43AM 22 HAVE SOME KNOWLEDGE OF THE OUTCOME OF MS. HOLMES'S CASE, CAN
11:43AM 23 YOU PUT THAT ASIDE AND JUST GIVE MR. BALWANI A TOTALLY CLEAN
11:43AM 24 SLATE UNTIL THE GOVERNMENT IS ABLE TO, YOU KNOW, PROVE
11:43AM 25 OTHERWISE?

11:43AM 1 PROSPECTIVE JUROR: WELL, I MEAN PERSONALLY I HAVE A
11:43AM 2 PROBLEM FOCUSSING. AS I MENTIONED IN THE QUESTIONNAIRE, I HAVE
11:43AM 3 PARKINSON'S DISEASE, AND IT AFFECTS, IT AFFECTS MY COGNITIVE
11:43AM 4 ABILITIES TO FOLLOW THROUGH ON A PARTICULAR THOUGHT AND FOCUS
11:43AM 5 ON THINGS.

11:43AM 6 SO, I MEAN, TO THAT EXTENT, I DON'T KNOW WHETHER IT'S
11:43AM 7 GOING TO BE -- IF I'M GOING TO BE TOTALLY ABLE TO DO THAT.

11:43AM 8 MR. COOPERSMITH: AND DO YOU THINK THAT'S PARTLY
11:43AM 9 BECAUSE OF YOUR ILLNESS, SIR?

11:43AM 10 PROSPECTIVE JUROR: WELL, IT'S JUST THAT, YOU KNOW,
11:43AM 11 I HAVE A DIFFICULTY WITH, WITH CONCENTRATING FOR SPECIFICALLY
11:43AM 12 CONTINUITY ISSUES FOLLOWING THROUGH LIKE A STORY LINE.

11:43AM 13 FOR EXAMPLE, IF I SEE A MOVIE OR READ A BOOK, I COULD
11:43AM 14 ENJOY IT IN THE MOMENT, BUT IF I TRY TO RECALL IT AFTERWARDS, I
11:43AM 15 COULDN'T TELL YOU WHAT THE PLOT IS.

11:43AM 16 IN OTHER WORDS, I GET HALF WAY THROUGH IT, AND LOSE TRACK
11:43AM 17 OF WHAT I'M --

11:43AM 18 MR. COOPERSMITH: SO JUST TO BE -- AND, FIRST OF
11:43AM 19 ALL, I'M VERY SORRY TO HEAR ABOUT YOUR ILLNESS, SIR.

11:43AM 20 PROSPECTIVE JUROR: OH, THANKS.

11:43AM 21 MR. COOPERSMITH: AND -- BUT BECAUSE OF THAT ISSUE,
11:43AM 22 IF YOU WERE TO SIT THROUGH A TRIAL THAT LASTED SEVERAL MONTHS,
11:43AM 23 AND THEN YOU WERE ASKED TO MAKE A DECISION OF MR. BALWANI BASED
11:43AM 24 ON ALL OF THE EVIDENCE THAT YOU HAVE HEARD, DO YOU HAVE ANY
11:43AM 25 DOUBT AS TO WHETHER YOU COULD RECALL AND PUT TOGETHER THE

11:43AM 1 DETAILS OF WHAT YOU HEARD IN ORDER TO, YOU KNOW, BE A JUROR WHO
11:43AM 2 COULD DELIBERATE AND REACH AN INVESTIGATION?

11:43AM 3 PROSPECTIVE JUROR: WELL, I DEFINITELY FEEL LIKE I
11:43AM 4 WOULD HAVE DIFFICULTY DOING THAT.

11:43AM 5 MR. COOPERSMITH: OKAY. OKAY. ALL RIGHT. THANK
11:43AM 6 YOU, SIR. I APPRECIATE YOUR HONESTY AND YOUR TIME.

11:43AM 7 PROSPECTIVE JUROR: OKAY.

11:43AM 8 MR. COOPERSMITH: I DON'T HAVE ANY OTHER QUESTIONS
11:43AM 9 FOR THIS JUROR.

11:43AM 10 THE COURT: MR. SCHENK.

11:43AM 11 MR. SCHENK: JUST ONE BRIEF QUESTION.

11:43AM 12 SOME JURORS DURING TRIAL DECIDE TO TAKE NOTES BECAUSE THEY
11:43AM 13 ALSO HAVE TROUBLE REMEMBERING DURING THE COURSE OF A LONG
11:43AM 14 TRIAL.

11:43AM 15 WOULD TAKING NOTES ASSIST YOU ABOUT RECALL LATER OR DO YOU
11:43AM 16 THINK THAT WOULDN'T BE A SUFFICIENT SOLUTION?

11:43AM 17 MR. COOPERSMITH: WELL, PART OF THE PROBLEM AND ONE
11:43AM 18 OF THE SYMPTOMS, PHYSICAL SYMPTOMS I HAVE IS DIFFICULTY IN
11:43AM 19 WRITING, AND I DON'T KNOW THAT I'LL BE ABLE TO TAKE NOTES
11:43AM 20 EFFECTIVELY.

11:43AM 21 THE COURT: OKAY. THANK YOU VERY MUCH.

11:43AM 22 ANYTHING FURTHER?

11:43AM 23 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

11:43AM 24 THE COURT: YOU'RE ONE OF THE RARE PEOPLE WHO ARE A
11:43AM 25 NATIVE BAY AREA. I THINK YOU WERE BORN IN SAN MATEO?

11:43AM 1 PROSPECTIVE JUROR: SAN MATEO, THAT'S CORRECT.

11:43AM 2 THE COURT: DID YOU GO TO SAN MATEO HIGH?

11:43AM 3 PROSPECTIVE JUROR: NO. I ACTUALLY GREW UP IN

11:43AM 4 SAN JOSE -- ACTUALLY I GREW UP IN SARATOGA AND WENT TO PROSPECT

11:43AM 5 HIGH SCHOOL.

11:43AM 6 THE COURT: OH. YOU'RE ONE OF THE LOCALS, TRUE

11:43AM 7 LOCALS. THERE USED TO BE A LOT OF ORCHARDS WHEN YOU WERE IN

11:43AM 8 HIGH SCHOOL.

11:43AM 9 PROSPECTIVE JUROR: WHEN I WAS A KID I REMEMBER

11:43AM 10 THEM.

11:43AM 11 THE COURT: DID YOU CUT APRICOTS?

11:43AM 12 PROSPECTIVE JUROR: NO, BUT WHEN I WAS A KID I

11:43AM 13 REMEMBER EATING THEM.

11:43AM 14 (LAUGHTER.)

11:43AM 15 THE COURT: THERE WERE A LOT OF THEM.

11:43AM 16 ANY FURTHER QUESTIONS?

11:43AM 17 MR. COOPERSMITH: NO, YOUR HONOR.

11:43AM 18 THE COURT: THANK YOU FOR COMING IN. YOU'LL BE

11:43AM 19 NOTIFIED BY THE CLERK'S OFFICE WHETHER YOU WILL NEED TO COME

11:43AM 20 BACK IN. THANK YOU FOR SPENDING TIME WITH US THIS MORNING.

11:43AM 21 PROSPECTIVE JUROR: THANK YOU VERY MUCH.

11:43AM 22 (PROSPECTIVE JUROR NUMBER 83 IS NOT PRESENT.)

11:43AM 23 THE COURT: MR. COOPERSMITH.

11:43AM 24 MR. COOPERSMITH: I THINK THERE WERE TWO ISSUES WITH

11:43AM 25 JUROR NUMBER 83. ONE IS THE HARDSHIP ISSUE.

11:43AM 1 I THINK MR. SCHENK MADE A GOOD POINT AND QUESTION ABOUT DO
11:43AM 2 YOU TAKE NOTES? AND APPARENTLY THAT'S NOT EVEN AN OPTION FOR
11:43AM 3 HIM.

11:43AM 4 THE COURT: THAT'S IN HIS QUESTIONNAIRE, HE HAS
11:43AM 5 TROUBLE WRITING.

11:43AM 6 MR. COOPERSMITH: SO BASED ON THE HARDSHIP. AND
11:43AM 7 ALSO I THINK THERE WERE SOME CAUSE ISSUES PUTTING THE OUTCOME
11:43AM 8 OUT AND ESPECIALLY WHEN YOU COMBINE THE TWO THINGS. I THINK
11:43AM 9 THIS JUROR SHOULD BE EXCUSED.

11:43AM 10 MR. LEACH: THE GOVERNMENT DOESN'T OPPOSE EXCUSING
11:43AM 11 HIM FOR HARDSHIP. I DON'T THINK WE NEED TO REACH THE CAUSE
11:43AM 12 ISSUE.

11:43AM 13 THE COURT: IN TALKING WITH HIM, AND THE COURT
11:43AM 14 REREAD HIS QUESTIONNAIRE, AND SEEING HIS DEMEANOR, AND I LOOKED
11:43AM 15 AT HIS WRITING, AND HE WAS VERY CANDID ABOUT HIS COGNITIVE
11:43AM 16 ABILITY TO RECALL, AND SO I'M GOING TO STRIKE HIM FOR HARDSHIP.

11:43AM 17 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 18 THE COURT: I THINK THAT EXHAUSTS YOUR LIST FOR THE
11:43AM 19 MORNING?

11:43AM 20 MR. COOPERSMITH: THAT WAS THE LIST.

11:43AM 21 THE COURT: OKAY.

11:43AM 22 MR. COOPERSMITH: AND THEN WE STILL HAVE THE OTHER
11:43AM 23 CAUSE STRIKES FOR THE PEOPLE.

11:43AM 24 I'VE GIVEN MR. SCHENK A DOCUMENT THAT TELLS THE GOVERNMENT
11:43AM 25 WHO THAT IS, AND I HAVE A DOCUMENT FOR THE COURT AS WELL. THIS

11:43AM 1 IS WHAT I WILL BE GOING THROUGH.

11:43AM 2 THE COURT: SHOULD I RECEIVE THIS?

11:43AM 3 MR. SCHENK: YES, YOUR HONOR. I THINK IT MAY BE
11:43AM 4 HELPFUL.

11:43AM 5 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 6 (HANDING.)

11:43AM 7 THE COURT: SHOULD WE -- LET ME CHECK MY CALENDAR
11:43AM 8 FOR JUST A MOMENT. LET'S GO OFF THE RECORD.

11:43AM 9 (DISCUSSION OFF THE RECORD.)

11:43AM 10 THE COURT: WE'LL SEE YOU AT 1:00 O'CLOCK.

11:43AM 11 YOU KNOW WHAT, WE'LL BE IN JUDGE KOH'S COURTROOM BECAUSE
11:43AM 12 THEY'LL BE HANGING THE MURAL HERE. SO WE'LL BE MEETING
11:43AM 13 DOWNSTAIRS, I THINK; IS THAT RIGHT?

11:43AM 14 MR. COOPERSMITH: YES, WE CAN DO THAT.

11:43AM 15 I'M SORRY, YOUR HONOR.

11:43AM 16 THERE WAS A JUROR THAT YOU DEFERRED ON 126 FROM YESTERDAY.

11:43AM 17 THE COURT: NOT 12 --

11:43AM 18 MR. COOPERSMITH: SHE WAS 126.

11:43AM 19 THE COURT: 126, YES. THE CHIROPRACTOR, RIGHT?

11:43AM 20 MR. COOPERSMITH: THAT'S CORRECT.

11:43AM 21 THE COURT: I DID REVIEW THE TRANSCRIPT OF THE
11:43AM 22 COLLOQUY. I THINK IT WAS TWO PAGES OF -- AT LEAST THAT I WAS
11:43AM 23 INTERESTED IN -- REGARDING -- WHAT I FOCUSSED ON YESTERDAY WAS
11:43AM 24 HER STATEMENTS REGARDING MORAL AND ETHICS. I WAS INTRIGUED BY
11:43AM 25 THAT.

11:43AM 1 HER OTHER COMMENTS ABOUT HER INVOLVEMENT WITH HER WORK DID
11:43AM 2 NOT TROUBLE ME. THAT IS SCHEDULING, AND SHE HAD COLLEAGUES WHO
11:43AM 3 COULD DO HER CASELOAD. SHE HAD CONCERN.

11:43AM 4 THAT, TO ME, SOUNDS LIKE, IF YOU WILL, THE NORMAL BUSINESS
11:43AM 5 DISRUPTION AND LIFE DISRUPTION THAT JURORS HAVE WHEN THEY'RE
11:43AM 6 CALLED. SO I DON'T HAVE ANY CONCERN ABOUT THAT.

11:43AM 7 MY CONCERN WAS FOCUSSED ON HER USE OF THE WORD "ETHICS"
11:43AM 8 AND "MORALITY," AND I WANTED TO LOOK AT THAT AGAIN.

11:43AM 9 IT SEEMED TO ME THAT SHE'S EQUATING HER -- SHE TOLD US AS
11:43AM 10 A HEALTH CARE PROVIDER THAT SHE PAYS GREAT ATTENTION TO ETHICS
11:43AM 11 AND MORAL. THAT CAUSES ME CONCERN THAT IN LOOKING AT THIS
11:43AM 12 EVIDENCE SHE'S GOING TO USE THAT LENS TO PERHAPS JUDGE THE
11:43AM 13 EVIDENCE IN AN UNFAIR MANNER.

11:43AM 14 MR. COOPERSMITH: THAT WAS OUR CONCERN AS WELL.

11:43AM 15 THE COURT: SO I'M GOING TO STRIKE HER FOR CAUSE.

11:43AM 16 THANK YOU FOR LETTING ME LOOK AT THE TRANSCRIPT.

11:43AM 17 WE'LL SEE YOU AT 1:00 O'CLOCK.

11:43AM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:43AM 19 MR. SCHENK: OKAY.

11:43AM 20 (LUNCH RECESS TAKEN AT 11:43 A.M.)

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AFTERNOON SESSION

(COURT CONVENED AT 1:06 P.M.)

(PROSPECTIVE JURY PANEL OUT AT 1:06 P.M.)

THE COURT: ALL RIGHT. WE'RE ON THE RECORD IN THE
BALWANI MATTER.

ALL COUNSEL PREVIOUSLY PRESENT ARE PRESENT AGAIN.

I THINK WE WERE GOING TO TALK ABOUT ADDITIONAL POTENTIAL
CHALLENGES I BELIEVE.

MR. COOPERSMITH: YES, YOUR HONOR.

THE COURT: LET ME FIX THE MICROPHONE BEFORE WE GO
ON THE RECORD, IRENE.

(DISCUSSION OFF THE RECORD.)

THE COURT: LET'S GO ON THE RECORD.

MR. COOPERSMITH, YOU HAVE SOME THOUGHTS ABOUT SOME JURORS?

MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

AND I DON'T KNOW IF YOU STILL HAVE THE LIST, YOUR HONOR,
BUT WE GAVE A LIST OUT WHEN WE WERE IN THE DELIBERATION ROOM TO
MR. SCHENK AS WELL.

THE COURT: YES.

MR. COOPERSMITH: AND THAT'S THE LIST THAT I'M GOING
TO FOLLOW.

THE COURT: OKAY.

MR. COOPERSMITH: I HAVE A COUPLE OF OTHER QUESTIONS
BEYOND THAT, BUT LET ME JUST START WITH THAT LIST.

SO THE FIRST ITEM DISCUSSED IS HARDSHIP ISSUES THAT WE

01:08PM 1 JUST WANTED TO MAKE SURE THE COURT ADDRESSED.

01:08PM 2 SO THE FIRST ONE IN THAT CATEGORY IS JUROR NUMBER 6.

01:08PM 3 WHAT WE DID HERE IS WE WENT BACK TO THE TRANSCRIPT SO WE
01:08PM 4 COULD GET EXACTLY WHAT THE RECORD WAS AND WHAT WE THOUGHT THE
01:08PM 5 ISSUE WAS.

01:08PM 6 SO ON THIS ONE THE JUROR SAID THAT "I HAVE TO WORK EARLY"
01:08PM 7 SO SHE CAN HELP HER SINGLE DAUGHTER TO WORK AFTER SHE COMES
01:08PM 8 HOME, BECAUSE SHE HAS A 97-YEAR OLD MOTHER-IN-LAW IN MY HOUSE
01:08PM 9 AND A 3-YEAR OLD TO TAKE CARE OF.

01:08PM 10 SHE SAID, IS THERE ANY ADJUSTMENT YOU CAN MAKE -- THE
01:08PM 11 COURT ASKED THE QUESTION IF THERE'S ANY ADJUSTMENT SHE CAN MAKE
01:08PM 12 TO MAKE SURE THE FAMILY IS PROVIDED FOR AND THE BABYSITTING
01:09PM 13 OCCURS AND YOU CAN ALSO BE A JUROR IN THIS CASE?

01:09PM 14 AND THE ANSWER WAS I DON'T KNOW.

01:09PM 15 SO THAT SEEMED TO BE A QUESTION. OBVIOUSLY THE COURT CAN
01:09PM 16 MAKE A DECISION ABOUT THAT, BUT I JUST WANTED TO BRING THAT TO
01:09PM 17 YOUR ATTENTION.

01:09PM 18 THE COURT: OKAY.

01:09PM 19 MR. SCHENK.

01:09PM 20 MR. SCHENK: YOUR HONOR, I THINK IT'S A CLOSE CALL.

01:09PM 21 I DON'T THINK THE RECORD IS AS GOOD OR AS CLOSE IT HAS BEEN FOR
01:09PM 22 OTHER JURORS WE HAVE EXCUSED FOR CAUSE BECAUSE OF HER "I DON'T
01:09PM 23 KNOW" ANSWER.

01:09PM 24 IF YOU LOOK AT HER QUESTIONNAIRE, IN QUESTION 1 SHE WROTE
01:09PM 25 NO TO WHETHER SHE WAS APPLYING TO BE EXCUSED ON THE BASIS OF A

01:09PM 1 SERIOUS HARDSHIP, BUT TO NUMBER 7 SHE WROTE YES.

01:09PM 2 NUMBER 7 WAS A QUESTION ABOUT THE IMPLICATIONS OF THE
01:09PM 3 COVID PANDEMIC ON THE JURY SERVICE. SHE WROTE DUE TO THE
01:09PM 4 PANDEMIC SHE HAD TO START WORK EARLY SO THAT SHE COULD TAKE
01:09PM 5 CARE OF THIS GRANDCHILD, ALLOWING HER CHILD TO WORK.

01:09PM 6 IT SEEMS, AS A RESULT, A LITTLE UNCLEAR IF, AS PANDEMIC
01:10PM 7 RESTRICTIONS LOOSEN, THIS HARDSHIP EVAPORATES AND WHETHER HER
01:10PM 8 ABILITY TO BE A JUROR IS THEN SORT OF MADE A LITTLE EASIER, AND
01:10PM 9 DOES THAT EXPLAIN THE "I DON'T KNOW" ANSWER BECAUSE OF THE
01:10PM 10 TRANSITION TIME WE'RE IN.

01:10PM 11 I SUPPOSE I'M LEFT IN A POSITION OF NOT REALLY BEING ABLE
01:10PM 12 TO PROVIDE MUCH OF A RECOMMENDATION TO THE COURT. I SUPPOSE MY
01:10PM 13 ANSWER IS LIKE HERS, I DON'T KNOW. IT'S A CLOSE CALL, AND THE
01:10PM 14 RECORD IS JUST INCOMPLETE ON HER REQUEST.

01:10PM 15 THE COURT: MR. COOPERSMITH, ANYTHING FURTHER ON
01:10PM 16 THAT ONE?

01:10PM 17 MR. COOPERSMITH: THAT'S ALL I HAVE, YOUR HONOR.

01:10PM 18 THE COURT: ALL RIGHT. THANK YOU.

01:10PM 19 I WAS HOPING WHEN I ASKED THE QUESTIONS, I TYPICALLY DO
01:10PM 20 ABOUT CONFLICTS AND THINGS, THAT WE WOULD HAVE A MORE FULSOME
01:10PM 21 ANSWER ABOUT SOLUTIONS, AND "I DON'T KNOW" IS THE BEST SHE
01:10PM 22 COULD DO WHEN I ASKED HER THE QUESTION.

01:10PM 23 WE DIDN'T CALL HER BACK TO ASK FOR FOLLOWUP.

01:11PM 24 I THINK IN THE TOTALITY OF HER CIRCUMSTANCES, WITH HER
01:11PM 25 97-YEAR YOUNG MOTHER AND THE 3-YEAR OLD, IT SOUNDS LIKE HER

01:11PM 1 HANDS ARE QUITE FULL ALREADY.

01:11PM 2 SO I'M GOING TO STRIKE HER FOR HARDSHIP. JUROR 6 IS
01:11PM 3 STRICKEN FOR HARDSHIP.

01:11PM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:11PM 5 MOVING ON TO THE NEXT ONE ON THE LIST -- OBVIOUSLY
01:11PM 6 NUMBER 10 WAS ALREADY STRUCK.

01:11PM 7 WE MOVE ON TO NUMBER 14, JUROR NUMBER 14.

01:11PM 8 THE COURT: YES.

01:11PM 9 MR. COOPERSMITH: SO THIS WAS A WOMAN WHO SAID THAT
01:11PM 10 HER CONCERN WAS THAT POLISH -- I'M SORRY, ENGLISH WAS NOT HER
01:11PM 11 FIRST LANGUAGE. SHE SAID THE CASE IS SO SERIOUS THAT I HAVE
01:11PM 12 CONCERNS THAT LAW TERMINOLOGY OR FINANCE TERMINOLOGY, SHE'S
01:11PM 13 REALLY NERVOUS ABOUT THIS AND IT MIGHT REALLY AFFECT, REALLY
01:11PM 14 AFFECT REALLY MY COMPREHENSION AND THE VERDICT.

01:11PM 15 AND THEN DURING THE COLLOQUY I HAD WITH HER, YOUR HONOR, I
01:11PM 16 ASKED HER ABOUT THAT ISSUE, AND SHE WAS TALKING ABOUT WATCHING
01:12PM 17 MOVIES AND HOW SHE DIDN'T REALLY HAVE A COMPREHENSION OF MOVIES
01:12PM 18 AND THAT SHE WAS ALWAYS HAVING TO ASK PEOPLE WHAT WAS GOING ON,
01:12PM 19 WHICH SHE OBVIOUSLY COULDN'T DO AS A JUROR.

01:12PM 20 AND SO WE THOUGHT FOR THAT REASON -- AND THIS IS A -- I
01:12PM 21 KNOW WHAT YOUR HONOR SAID, AND WE WILL, OF COURSE -- I'M SURE
01:12PM 22 THE GOVERNMENT WILL AS WELL -- WILL TRY TO MAKE THIS AS
01:12PM 23 DIGESTIBLE AS WE CAN, AND IT'S TO OUR ADVANTAGE AND ALL OF OUR
01:12PM 24 ADVANTAGES TO DO THAT.

01:12PM 25 HOWEVER, THIS JUROR, I THINK, SAID SEVERAL TIMES SHE HAD

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CONCERNS.

I'LL JUST MENTION, AND I'M TALKING ABOUT HARDSHIP, SHE DID MENTION IN HER QUESTIONNAIRE THAT HER HUSBAND ALWAYS SAYS THAT THERANOS WAS THE BIGGEST SCAM. THAT WAS QUESTION 39.

AND IN QUESTION 41, SHE WROTE, SHE GOT MONEY FROM PEOPLE PROMISING NEVER TO DELIVER.

AND I KNOW SHE ANSWERED SOME QUESTIONS THAT SUGGESTED THAT SHE COULD STILL BE FAIR. WE HAVE THAT LINGERING CONCERN.

BUT THE HARDSHIP ISSUE TO US ON THE ENGLISH LANGUAGE AND THE FAILURE TO COMPREHEND MOVIES WE THINK WOULD BE ENOUGH TO STRIKE.

THE COURT: OKAY.

MR. SCHENK: YOUR HONOR, THE GOVERNMENT OPPOSES EXCUSING JUROR 14 FOR HARDSHIP. SHE HAS BEEN IN THE UNITED STATES I THINK SHE SAID FOR 30 YEARS.

SHE ENGAGED THOUGHTFULLY IN DIALOGUE WITH THE COURT AND WITH MR. COOPERSMITH ON ALL OF THESE ISSUES.

IF YOU LOOK AT HER QUESTIONNAIRE, SHE ANSWERED THE QUESTIONS. SHE DIDN'T JUST CHECK YES OR NO. ON MANY OCCASIONS SHE WROTE OUT RESPONSES. SHE EVEN WROTE NOT APPLICABLE OR N-A TO CERTAIN QUESTIONS. THAT SHOWED SHE WASN'T SKIPPING QUESTIONS THAT SHE FOUND CONFUSING OR DIDN'T KNOW HOW TO RESPOND TO.

BUT HER QUESTIONNAIRE ALSO DOESN'T SUGGEST SOMEONE WHOSE LANGUAGE DIFFICULTIES WOULD RISE TO THE LEVEL OF A HARDSHIP FOR

01:13PM 1 OUR CASE.

01:13PM 2 THE COURT: ALL RIGHT. THANK YOU.

01:13PM 3 SHE WAS -- I DON'T WANT TO USE THE WORD "ENTERTAINING,"

01:13PM 4 BUT SHE DID EXCHANGE WITH THE COURT AND COUNSEL, I THOUGHT

01:14PM 5 EFFECTIVELY. AND ACTUALLY, AS THE DAY WENT ON, I THOUGHT SHE

01:14PM 6 GOT BETTER, CANDIDLY. IT SEEMED TO BE HER ATTENTION LEVEL WAS

01:14PM 7 INCREASED.

01:14PM 8 SHE TOLD US ABOUT THE MOVIES. I WAS STRUCK WITH PERHAPS

01:14PM 9 SHE WAS BEING A MOVIE CRITIC BECAUSE SHE SAID, MY HUSBAND

01:14PM 10 WATCHES THESE POLITICAL MOVIES, AND IT'S HARD FOR ME TO FOLLOW

01:14PM 11 THE POLITICAL MOVIES.

01:14PM 12 AND I DON'T KNOW IF THAT WAS THE PLOT, BECAUSE SOMETIMES

01:14PM 13 THOSE ARE DENSE AND THICK AND FULL OF SURPRISES, OR WHETHER IT

01:14PM 14 WAS SOMETHING ELSE.

01:14PM 15 SHE DID, IN RESPONSE TO ONE OF OUR QUESTIONS ABOUT -- I

01:14PM 16 THINK IT WAS MR. SCHENK, WELL, WHAT DO YOU DO IF THE T.V. IS

01:14PM 17 ON? BECAUSE SHE SAID THE T.V. IS ALWAYS ON IN HER HOUSEHOLD,

01:14PM 18 OR FREQUENTLY ON.

01:14PM 19 SHE SAID, DO I JUST RUN OUT OF THE ROOM? WELL, I GUESS

01:14PM 20 THAT'S WHAT I'LL DO, I'LL RUN OUT OF THE ROOM.

01:14PM 21 SO SHE SEEMED TO HAVE COMPREHENSIVE KNOWLEDGE ABOUT THE

01:14PM 22 INSTRUCTION THAT THAT QUESTION, AND THE RESPONSE WAS PHRASED

01:15PM 23 TO, THE NEED NOT TO BE EXPOSED.

01:15PM 24 AND SHE HAS BEEN HERE 30 YEARS. I RECOGNIZE THAT -- I

01:15PM 25 THINK POLISH IS HER FIRST LANGUAGE. BUT I, I DIDN'T HAVE

01:15PM 1 DIFFICULTY COMMUNICATING WITH HER, AND I DIDN'T OBSERVE THAT
01:15PM 2 COUNSEL DID.

01:15PM 3 YOU MAY HAVE HAD TO REPEAT A QUESTION, BUT I DON'T THINK
01:15PM 4 IT WAS LANGUAGE. I THINK IT WAS AUDITORY. THE MICROPHONES
01:15PM 5 WERE NOT WORKING.

01:15PM 6 BUT I'M NOT GOING TO FIND A HARDSHIP OR A CAUSE FOR HER.
01:15PM 7 SO SHE'LL REMAIN ON THE PANEL.

01:15PM 8 MR. COOPERSMITH: UNDERSTOOD, YOUR HONOR.

01:15PM 9 AND BY THE WAY, I'LL ALSO MENTION THAT SHE COMPLAINED
01:15PM 10 ABOUT A FINGER INJURY.

01:15PM 11 THE COURT: YES.

01:15PM 12 MR. COOPERSMITH: AND I DON'T KNOW THAT THAT WAS A
01:15PM 13 REASON TO STRIKE HER, SO I WASN'T INCLUDING THAT.

01:15PM 14 THE COURT: SHE SEEMED TO -- SHE HELD IT UP, I
01:15PM 15 THINK. AND I SAW HER. SHE TOLD US SHE HAD TO EXERCISE IT, AND
01:15PM 16 MY OBSERVATION WAS THAT THERE WERE A COUPLE OF TIMES WHEN SHE
01:15PM 17 WAS MOVING HER HAND AROUND AND CLOSING IT AND OPENING IT, AND I
01:15PM 18 DON'T KNOW IF THAT WAS THE EXERCISE SHE WAS REFERENCING, BUT --

01:16PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

01:16PM 20 THE COURT: OKAY.

01:16PM 21 MR. COOPERSMITH: THAT BRINGS US TO JUROR NUMBER 31.

01:16PM 22 THIS WAS THE YOUNG MAN WHO SAID HE HAD BEEN ON OTHER
01:16PM 23 JURIES. HE SAID IT WAS A THIRD TIME THAT HE HAD BEEN CALLED.
01:16PM 24 YOU REMEMBER HIM.

01:16PM 25 THE COURT: YES. I DON'T NEED TO HEAR A LOT ABOUT

01:16PM 1 31. I THINK I HEARD A LOT ABOUT 31 FROM HIS OWN MOUTH, SO I
01:16PM 2 DON'T NEED ANY ASSISTANCE FOR 31. I'M GOING TO STRIKE HIM FOR
01:16PM 3 HARDSHIP.

01:16PM 4 THANK YOU FOR YOUR OFFER.

01:16PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

01:16PM 6 NEXT ONE FOR HARDSHIP IS 42.

01:16PM 7 SO WE LOOKED BACK AT THE TRANSCRIPT, AND IT'S QUOTED IN
01:16PM 8 THE LIST I HANDED UP, YOUR HONOR, THE TRANSCRIPT CITES.

01:16PM 9 SO JUST GOING THROUGH THE BULLET POINTS, HE SAID, "SO I'VE
01:16PM 10 BEEN APPLYING FOR THE LAST MONTH FOR A JOB. SINCE I WAS AWAY
01:16PM 11 FROM WORK FOR THE LAST TEN YEARS IT WAS NOT, LIKE, REALLY EASY
01:17PM 12 TO FIND SOME," REFERRING TO APPLYING FOR A JOB.

01:17PM 13 AND THEN HE CONTINUED. "AT PRESENT I HAVE ONE OFFER
01:17PM 14 ALREADY, AND TODAY, THIS MORNING, I RECEIVED IN THE MAIL
01:17PM 15 THEY'RE PUTTING ONE FOR ME, THE SECOND ONE, LIKE TODAY,
01:17PM 16 SOMETHING, THAT I'M WILLING TO TAKE."

01:17PM 17 AND THEN HE TALKED ABOUT THE DIFFICULTY OF A START DATE.

01:17PM 18 THE COURT: SHE.

01:17PM 19 MR. COOPERSMITH: I'M SORRY, YOUR HONOR, SHE HAD
01:17PM 20 DIFFICULTY WITH THE START DATE.

01:17PM 21 AND THEN YOUR HONOR HAD A DIALOGUE WITH HER WHERE YOU
01:17PM 22 ASKED HER ABOUT THE CONCERN, AND SHE SAID THAT ULTIMATELY, "AND
01:17PM 23 THEY WOULD BE, LIKE, TRAINING, I WOULDN'T BE ABLE TO LEARN THE
01:17PM 24 THING PROPERLY IF I'M NOT THERE."

01:17PM 25 SO BASICALLY IN A NUTSHELL, SHE WAS TOLD -- SHE WAS

01:17PM 1 LOOKING FOR A JOB, SHE HADN'T WORKED FOR A WHILE OUTSIDE OF THE
01:18PM 2 HOME APPARENTLY. SHE DECIDED TO GET BACK INTO THE WORK FORCE.
01:18PM 3 SHE APPLIED FOR A COUPLE OF JOBS. SHE HAD AN OFFER, I THINK IT
01:18PM 4 WAS BEING PREPARED AND SHE WAS GOING TO GET IT. SHE WANTED TO
01:18PM 5 ACCEPT IT AND SHE FELT IT WOULD BE VERY DIFFICULT TO SAY, WELL,
01:18PM 6 ACTUALLY THANK YOU, BUT I'M NOT GOING TO BE ABLE TO START FOR
01:18PM 7 THREE MONTHS.

01:18PM 8 SO THAT SEEMED TO BE A PROBLEM FOR HER AND A REASON TO
01:18PM 9 STRIKE HER.

01:18PM 10 MR. SCHENK: YOUR HONOR, I THINK THIS ONE IS ALSO A
01:18PM 11 CLOSE CALL, LIKE NUMBER 6. THERE'S TWO JOB OFFERS SHE TALKED
01:18PM 12 ABOUT WITH THE COURT.

01:18PM 13 THE FIRST ONE SHE ACTUALLY KNEW ABOUT WHEN SHE FILLED OUT
01:18PM 14 THE QUESTIONNAIRE. IT'S NOT THE ONE THAT SHE WAS INCLINED TO
01:18PM 15 ACCEPT.

01:18PM 16 THE SECOND ONE SHE RECEIVED THE OFFER, OR AT LEAST
01:18PM 17 COMMUNICATION THAT SHE WOULD RECEIVE AN OFFER AFTER FILLING OUT
01:18PM 18 THE QUESTIONNAIRE, BUT BEFORE COMING TO COURT FOR THE JURY
01:18PM 19 SELECTION PROCESS.

01:18PM 20 WHAT SHE SAID WAS, THAT IS THE ONE THAT I WANT TO ACCEPT.
01:18PM 21 THAT ONE HAS A START DATE I THINK SHE SAID THE 28TH OF MARCH.

01:18PM 22 AND SHE DIDN'T HAVE THE WRITTEN OFFER YET, AND SHE HAD NOT
01:18PM 23 COMMUNICATED WITH THEM ABOUT THE IMPACT OF JURY SERVICE AND, IN
01:19PM 24 PARTICULAR, WHETHER THE JURY SERVICE WOULD AFFECT HER ABILITY
01:19PM 25 TO TRAIN AT THIS NEW EMPLOYER OR WHETHER SHE WOULD START SORT

01:19PM 1 OF BEHIND BECAUSE SHE MISSED THE TRAINING.

01:19PM 2 I REALLY WOULD PREFER IF WE HAD A LITTLE MORE DEVELOPED ON
01:19PM 3 THAT, THE WRITTEN OFFER AND THE INFORMATION ABOUT WHETHER THERE
01:19PM 4 IS ACTUALLY A CONFLICT BETWEEN OUR DAYS OF TRIAL AND HER
01:19PM 5 ABILITY TO TRAIN.

01:19PM 6 THAT SAID, IT DOES WORRY ME A LITTLE BIT THAT KEEPING HER
01:19PM 7 ON, INCLUDING HER IN THE SELECTION IS GOING TO GIVE US A JUROR
01:19PM 8 WHO VERY QUICKLY IS GOING TO HAVE A CRYSTALLIZED HARDSHIP.

01:19PM 9 I DON'T THINK IT'S CRYSTALLIZED TODAY, BUT IT FEELS LIKE
01:19PM 10 WE'RE ON THE EVE OF A CRYSTALLIZED HARDSHIP.

01:19PM 11 THE COURT: THANK YOU.

01:19PM 12 ANYTHING FURTHER, MR. COOPERSMITH?

01:19PM 13 MR. COOPERSMITH: YOUR HONOR, JUST THAT ONE THING --

01:19PM 14 THE COURT: YOU DON'T HAVE TO IF YOU DON'T WANT TO.

01:19PM 15 MR. COOPERSMITH: WELL, NO. I'LL JUST SAY REAL
01:19PM 16 QUICKLY THAT IT'S ONE THING TO HAVE AN ESTABLISHED JOB AND YOU
01:20PM 17 CAN TELL YOUR EMPLOYER I'LL COME DO JURY SERVICE.

01:20PM 18 BUT IN THIS SITUATION IT SEEMED REALLY PROBLEMATIC FOR
01:20PM 19 HER.

01:20PM 20 THE COURT: YEAH, IT IS -- IT IS REGRETTABLE THAT
01:20PM 21 HER NEW JOB AND THE TRIAL START, COINCIDE SOMEWHAT AND OVERLAP.

01:20PM 22 I THOUGHT, WELL, WHY DON'T YOU JUST -- WE'LL TAKE A BREAK
01:20PM 23 AND WHY DON'T YOU CALL THEM AND TELL THEM YOU ACCEPT, BUT YOU
01:20PM 24 WON'T BE AVAILABLE FOR THREE MONTHS.

01:20PM 25 THAT'S NOT REALISTIC, I THINK, IN TODAY'S MARKET.

01:20PM 1 AND SHE, I THINK, HAS A SPECIALIZED FIELD. I THINK SHE
01:20PM 2 HAS ADVANCED DEGREES.

01:20PM 3 I'M GOING TO STRIKE HER FOR HARDSHIP.

01:20PM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:20PM 5 THAT BRINGS US TO JUROR NUMBER 79. SHE WAS THE SOCIAL
01:20PM 6 WORKER AT THE DAVITA DIALYSIS CLINIC. SHE EXPLAINED HOW SHE
01:20PM 7 OVERSAW ABOUT 130 PATIENTS. SHE'S MOVING TO A DIFFERENT
01:20PM 8 LOCATION WITH HER CLINIC.

01:21PM 9 AND THEN SHE TALKED ABOUT HOW THE SOCIAL WORKERS WERE
01:21PM 10 ALREADY COVERING OTHER CLINICS AND SHE SAID IT WOULD BE A VERY
01:21PM 11 LARGE IMPACT ON HER PATIENTS.

01:21PM 12 THAT'S PRETTY MUCH THE GIST OF THAT. BUT THAT'S WHAT CAME
01:21PM 13 UP WITH HER.

01:21PM 14 MR. SCHENK: YOUR HONOR, THE GOVERNMENT WOULD OPPOSE
01:21PM 15 EXCUSING 79 FOR HARDSHIP. I BELIEVE DAVITA IS A VERY LARGE
01:21PM 16 EMPLOYER. THERE ARE OTHER INDIVIDUALS, OTHER SOCIAL WORKERS
01:21PM 17 AVAILABLE. I APPRECIATE THAT.

01:21PM 18 THE PROCESS OF COVERING DOWN OR COVERING OVER WOULD BE
01:21PM 19 BURDENSOME, BUT I DID NOT GET THE IMPRESSION FROM HER
01:21PM 20 STATEMENTS THAT THERE WAS AN INABILITY TO COVER.

01:21PM 21 THERE WERE CHALLENGES, AND JURY SERVICE PRESENT CHALLENGES
01:21PM 22 FOR ALL OF THE JURORS THAT WE ASK TO SIT, ESPECIALLY IN A TRIAL
01:21PM 23 OF THIS LENGTH.

01:21PM 24 BUT I DON'T KNOW THAT WHAT WE HEARD FROM HER REGARDING THE
01:21PM 25 IMPACT WAS SUFFICIENT TO RISE TO A HARDSHIP THE GOVERNMENT

01:21PM 1 WOULD SUPPORT IN THIS CASE.

01:21PM 2 THE COURT: SHE WAS -- SHE TOLD US ABOUT THE IMPACT.

01:21PM 3 IT SEEMED, IN MY VIEW, THAT SHE HAD GREAT CONCERN FOR THE
01:22PM 4 IMPACT, OF COURSE WITH HER PATIENTS, BUT ALSO ON HER COLLEAGUES
01:22PM 5 THAT WOULD BE ABSORBING HER CASELOAD OR SOMEHOW SPLITTING UP
01:22PM 6 HER CASELOAD.

01:22PM 7 INTERESTING, SHE DID NOT TELL US THAT SHE WAS CONCERNED
01:22PM 8 WITH A FINANCIAL ISSUE THAT WE FREQUENTLY SEE, AND THAT WASN'T
01:22PM 9 COVERED. THAT WASN'T RAISED BY HER THAT SHE WAS CONCERNED
01:22PM 10 THAT SHE MIGHT NOT BE PAID OR IT WOULD CAUSE A HARDSHIP TO HER
01:22PM 11 FAMILY INCOME AT ALL.

01:22PM 12 SHE DID TALK ABOUT THE CONCERN OF WORK ON HER COLLEAGUES,
01:22PM 13 AND I THINK THAT SPEAKS HIGHLY OF HER. SHE'S PROBABLY JUST A
01:22PM 14 WONDERFUL COWORKER TO BE WITH, AND COMMITTED TO HER PATIENTS,
01:22PM 15 BUT I DON'T SEE ENOUGH TO EXCUSE HER FOR HARDSHIP BASED ON THE
01:22PM 16 RECORD.

01:22PM 17 SO I'M NOT GOING TO STRIKE HER FOR HARDSHIP.

01:22PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:22PM 19 MOVING ON TO JUROR 101.

01:22PM 20 JUROR 101 IS THE WOMAN WHO SAID SHE OWNED FIVE
01:23PM 21 RESTAURANTS. SHE SAID HER HUSBAND MANAGED ONE OF THE
01:23PM 22 RESTAURANTS I BELIEVE.

01:23PM 23 THE COURT: WAS ONE OF THEM IN SEATTLE ALSO, I
01:23PM 24 THINK?

01:23PM 25 MR. COOPERSMITH: WE HAVE A LOT OF GREAT VIETNAMESE

01:23PM 1 RESTAURANTS IN SEATTLE. I'M NOT SURE HERS IS ONE OF THEM.

01:23PM 2 SO SHE SAID SHE OWNED THESE RESTAURANTS AND SHE SAID SHE
01:23PM 3 HAD TO GO TO THE MARKET EVERY DAY.

01:23PM 4 AND SHE ALSO HAD SOME FAMILY RESPONSIBILITY. SHE HAD
01:23PM 5 THREE CHILDREN WHO WERE YOUNG, AGES 4, 9, AND 11.

01:23PM 6 AND THEN SHE -- IT WAS EITHER HERE OR HER HUSBAND WHO
01:23PM 7 COULD DO THE DROPOFF AND THE PICKUP OF THE CHILDREN, BUT THOSE
01:23PM 8 ARE OTHER PEOPLE, BUT THEN SHE ALSO HAD TO MANAGE THE
01:23PM 9 RESTAURANTS.

01:23PM 10 AND I'LL ALSO NOTE, YOUR HONOR, THAT ON HER QUESTIONNAIRE,
01:23PM 11 SHE INDICATED A PROBLEM WITH UNDERSTANDING ENGLISH.

01:23PM 12 SO THAT'S, IN A NUTSHELL, THE HARDSHIP WITH HER.

01:23PM 13 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OPPOSES
01:23PM 14 EXCUSING 101 FOR HARDSHIP.

01:24PM 15 FIRST, THE HOW OLD QUESTION, SHE SAID ACTUALLY, "THE KIDS
01:24PM 16 ARE OKAY, WE HAVE HELP." I BELIEVE THEY HIRE SOMEONE.

01:24PM 17 HER QUESTIONNAIRE I WOULD SAY DOES NOT SUPPORT DIFFICULTY
01:24PM 18 UNDERSTANDING ENGLISH. SHE ANSWERS THE QUESTIONS. SHE WRITES
01:24PM 19 ADDITIONAL RESPONSES IN ENGLISH TO QUESTIONS THAT CALL FOR
01:24PM 20 ADDITIONAL INFORMATION.

01:24PM 21 SO THAT LEAVES US WITH THE QUESTION OF COVERAGE FOR
01:24PM 22 RESTAURANTS. SHE SAID THAT WHAT SHE -- SHE OWNS THEM. THERE
01:24PM 23 ARE OBVIOUSLY EMPLOYEES THAT WORK AT THEM, AND THEN THE
01:24PM 24 PARTICULAR ISSUE WAS GOING TO THE MARKET EVERY DAY TO SUPPLY
01:24PM 25 THE RESTAURANT, AND SHE SAID THAT SHE HAS OTHER PEOPLE WHO CAN

01:24PM 1 HELP HER WITH THAT.

01:24PM 2 WHAT HER CONCERN WAS, I CAN RELY ON THESE OTHER PEOPLE FOR
01:24PM 3 A FEW WEEKS, BUT WILL I BE ABLE TO RELY ON OTHERS BEYOND THOSE
01:24PM 4 INITIAL WEEKS?

01:24PM 5 AND I DON'T -- I GUESS MY BELIEF IS THAT THE RECORD DOES
01:24PM 6 NOT ACTUALLY SUPPORT SOME STATEMENT THAT THERE REALLY IS A
01:25PM 7 HARDSHIP, THE HARDSHIP WILL CRYSTALLIZE AT THIS POINT BECAUSE
01:25PM 8 OF THIS REASON.

01:25PM 9 I THINK WHAT THE EVIDENCE OR THE RECORD BEFORE US SHOWS IS
01:25PM 10 THAT SHE HAS HELP IN BOTH PLACES THAT SHE ARTICULATED HARDSHIP.
01:25PM 11 SHE HAS OTHERS WHO HELP CARE FOR THE KIDS, AND SHE HAS OTHERS
01:25PM 12 WHO HELP TAKE CARE OF THE RESTAURANT.

01:25PM 13 AND AS A RESULT I DON'T THINK SHE QUALIFIES FOR A
01:25PM 14 HARDSHIP.

01:25PM 15 THE COURT: THANK YOU.

01:25PM 16 I THINK SHE TOLD US SHE HAS ONE EMPLOYEE THAT SHE HELD IN
01:25PM 17 HIGH REGARD. I THINK, WASN'T THAT HER HUSBAND?

01:25PM 18 (LAUGHTER.)

01:25PM 19 MR. COOPERSMITH: THAT'S TRUE, YOUR HONOR.

01:25PM 20 THE COURT: AND THAT SEEMED TO SUGGEST -- AND LET ME
01:25PM 21 SAY, HER PRESENCE WAS KNOWN TO THE COURT. LET ME SAY THAT. I
01:25PM 22 DON'T THINK SHE WAS SHY ABOUT ANSWERING QUESTIONS AND I DON'T
01:25PM 23 THINK SHE HAD DIFFICULTY ANSWERING YOUR QUESTIONS.

01:25PM 24 MY SENSE IS THAT SHE PROBABLY HAS BEEN RUNNING HER
01:25PM 25 BUSINESS FOR 13 YEARS SHE TELLS US, AND SHE SAYS IT'S AN

01:25PM 1 ONGOING CONCERN. SHE KNOWS HOW TO DO THAT.

01:26PM 2 MY SENSE IS THAT HER BUSINESS MANAGEMENT SKILLS, SHE'S
01:26PM 3 PROBABLY A LITTLE HUMBLE ABOUT THOSE.

01:26PM 4 SO I'M GOING TO DENY TO FIND A HARDSHIP FOR HER. I THINK
01:26PM 5 SHE CAN ENGAGE REPLACEMENTS TO MANAGE THE DIFFICULTIES THAT SHE
01:26PM 6 EXPRESSED.

01:26PM 7 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:26PM 8 ONE OTHER ISSUE I WANTED TO RAISE WITH THE COURT IS NOT ON
01:26PM 9 THE LIST THAT WE PASSED UP, BUT WE WERE JUST REMEMBERING DURING
01:26PM 10 THE BREAK, IS THAT THERE WAS ONE JUROR, WHO WAS NUMBER 119, AND
01:26PM 11 THE ONLY THING I WANTED TO RAISE TO THE COURT WAS THAT SHE SAID
01:26PM 12 THAT SHE HAD EMAILED, I BELIEVE SHE SAID, HER DOCTOR, BECAUSE
01:26PM 13 THIS WAS THE WOMAN WHO SAID SHE WOULD BE 31 WEEKS PREGNANT SHE
01:26PM 14 PREDICTED AT THE END OF THE TRIAL.

01:26PM 15 THE COURT: RIGHT.

01:26PM 16 MR. COOPERSMITH: AND SHE SAID SHE EMAILED HER
01:26PM 17 DOCTOR AND HAD NOT HEARD BACK YET.

01:27PM 18 THE COURT: RIGHT.

01:27PM 19 MR. COOPERSMITH: AND I WONDERED IF WE SHOULD FOLLOW
01:27PM 20 UP TO SEE.

01:27PM 21 BECAUSE THE ISSUE WAS SHE WAS ASKING THE DOCTOR IF SOMEHOW
01:27PM 22 STRESS WITH THE TRIAL WOULD IMPACT HER, BUT WE DON'T KNOW THE
01:27PM 23 ANSWER TO THAT. BUT SHE WAS EMAILING THE DOCTOR, AND WE JUST
01:27PM 24 DON'T KNOW.

01:27PM 25 THE COURT: MR. SCHENK.

01:27PM 1 MR. SCHENK: I CERTAINLY DON'T -- I'M NOT AWARE OF
01:27PM 2 WHAT WOULD CHANGE THE RECORD ON THE HARDSHIP SINCE WHEN WE LAST
01:27PM 3 DISCUSSED THIS.

01:27PM 4 SHE'S PART OF THE VENIRE UNTIL WE RECEIVE ADDITIONAL
01:27PM 5 INFORMATION THAT WOULD LEAD US TO REEVALUATE THAT SITUATION.

01:27PM 6 THE COURT: SHE INDICATED IN HER QUESTIONNAIRE AND
01:27PM 7 TO US THAT SHE WAS SOMEWHAT CONCERNED, AND I THINK HER
01:27PM 8 STATEMENT WAS I JUST WANT TO LET YOU GUYS KNOW, I THINK IS WHAT
01:27PM 9 SHE SAID.

01:27PM 10 AND I ASKED ABOUT DOCTORS, AND SHE SAID, WELL, I'VE
01:27PM 11 EMAILED HER, AND I HAVEN'T HEARD BACK.

01:27PM 12 I DON'T KNOW IF -- MADAM CLERK, HAVE WE RECEIVED ANY
01:28PM 13 INDICATION FROM JUROR 119 VIA EMAIL OR PHONE MESSAGE?

01:28PM 14 THE CLERK: NO, NONE WHATSOEVER.

01:28PM 15 THE COURT: I'M LED TO THINK THAT IF SHE HAD HEARD
01:28PM 16 FROM HER DOCTOR WITH SOME ADVICE THAT SHE NOT DO THIS, SHE
01:28PM 17 SEEMED LIKE A RESPONSIBLE PERSON, SHE WOULD HAVE NOTIFIED THE
01:28PM 18 COURT, PERHAPS, OR MAYBE SHE'LL WAIT UNTIL SHE'S SUMMONED AND
01:28PM 19 THEN NOTIFY, AND THAT CREATES ANOTHER ISSUE, I SUPPOSE.

01:28PM 20 MR. COOPERSMITH: RIGHT.

01:28PM 21 THE COURT: BUT MY INTENT -- LET ME SAY THIS: I'M
01:28PM 22 NOT GOING TO, I'M NOT GOING TO EXCUSE HER NOW.

01:28PM 23 WHAT I'D LIKE TO DO IS -- I DON'T THINK THE RECORD IS
01:28PM 24 SUFFICIENT TO CAUSE ME TO DO THAT.

01:28PM 25 ANYTHING ELSE, OTHER STRIKES OR ANYTHING ELSE YOU WOULD

01:28PM 1 LIKE TO RAISE ABOUT OUR PANEL?

01:28PM 2 MR. COOPERSMITH: YES, YOUR HONOR.

01:28PM 3 THERE'S ONE MORE HARDSHIP RELATED ISSUE TO THE COURT, AND
01:28PM 4 THEN THERE'S ONE ADDITIONAL CAUSE ISSUE. SO IF I COULD ADDRESS
01:28PM 5 THOSE IN TURN?

01:28PM 6 THE COURT: SURE.

01:29PM 7 MR. COOPERSMITH: FIRST, THIS JUROR IS NUMBER 142
01:29PM 8 THAT I'M TALKING ABOUT RIGHT NOW.

01:29PM 9 NUMBER 142, I DON'T RECALL THAT THERE WAS ANY DIALOGUE
01:29PM 10 WITH HER, SO WE REALLY DON'T HAVE A LOT OF INFORMATION, AND
01:29PM 11 THAT HAPPENS, YOU KNOW, OBVIOUSLY SOMETIMES.

01:29PM 12 BUT I WENT BACK OVER THE BREAK AND I LOOKED AND I SAW THAT
01:29PM 13 IN THE QUESTIONNAIRE SHE DID RAISE THAT SHE HAD TROUBLE
01:29PM 14 UNDERSTANDING THE QUESTIONNAIRE. I THINK THAT'S QUESTION 70
01:29PM 15 AND 65.

01:29PM 16 AND THEN SHE -- YOU KNOW, SHE WAS RAISING THE ISSUE. IN
01:29PM 17 FACT, I THINK SHE MAYBE EVEN ASKED FOR A HARDSHIP EXCUSAL BASED
01:29PM 18 ON THE ENGLISH LANGUAGE DIFFICULTY.

01:29PM 19 SO THAT'S SOMETHING ELSE I NOTICED, AND I WANTED TO RAISE
01:29PM 20 THAT FOR THE COURT'S ATTENTION AS WELL.

01:29PM 21 THE COURT: I NOTICED THAT SOME OF THE QUESTIONS ARE
01:29PM 22 BLANK, I THINK, IN THE QUESTIONNAIRE.

01:29PM 23 MR. COOPERSMITH: YES, YOUR HONOR.

01:29PM 24 THE COURT: I DON'T HAVE IT IN FRONT OF ME NOW. I
01:29PM 25 HAVE MY NOTES.

01:29PM 1 BUT I THINK THERE ARE SOME PAGES THAT WERE BLANK, BUT SHE
01:30PM 2 WASN'T -- THERE WERE NO QUESTIONS POSED TO HER, WERE THERE, BY
01:30PM 3 COUNSEL OR THE COURT?

01:30PM 4 MR. COOPERSMITH: NO, YOUR HONOR, NOT THAT I CAN
01:30PM 5 RECALL.

01:30PM 6 THE COURT: THAT MEANS THAT SHE DIDN'T RAISE HER
01:30PM 7 HAND WHEN I EXPRESSED AN INVITATION TO.

01:30PM 8 MR. SCHENK: YOUR HONOR, I'M SCROLLING THROUGH 142'S
01:30PM 9 QUESTIONNAIRE NOW, AND AT LEAST IN MY REVIEW THERE'S SOME
01:30PM 10 QUESTIONS THAT ARE LEFT BLANK, BUT I DON'T NOTICE ANY WHOLE
01:30PM 11 PAGES WHERE SHE FAILS TO MAKE ANY MARKINGS.

01:30PM 12 SHE CHECKS DIFFERENT ANSWERS, SOMETIMES NO TO QUESTIONS.
01:30PM 13 I BELIEVE THERE WERE INSTANCES WHERE SHE WROTE NOT LENGTHY,
01:30PM 14 BUT, FOR INSTANCE, SHE -- TO THE QUESTION ABOUT HOBBIES, SHE
01:30PM 15 HAND WROTE IN TWO DIFFERENT HOBBIES TO THAT QUESTION TO
01:30PM 16 OCCUPATION OR JOBS.

01:30PM 17 SHE WROTE IN ANSWERS TO THOSE QUESTIONS.

01:30PM 18 SHE DOES TELL US THAT HER EDUCATIONAL BACKGROUND WAS IN A
01:31PM 19 DIFFERENT COUNTRY. SHE WRITES THE NAME OF THE COUNTRY IN THAT
01:31PM 20 QUESTION.

01:31PM 21 AND I AGREE, I DON'T HAVE ANY NOTES FROM 142 IN COURT.

01:31PM 22 SO I THINK THAT THE RECORD AT THIS POINT IS INSUFFICIENT
01:31PM 23 TO EXCUSE FOR LANGUAGE.

01:31PM 24 THE COURT: OKAY. THANK YOU.

01:31PM 25 I'M NOT GOING TO EXCUSE HER. WE JUST DON'T HAVE A FULSOME

01:31PM 1 RECORD ON HER, AND IT'S REGRETTABLE THAT NONE OF US ASKED HER
01:31PM 2 QUESTIONS ABOUT THIS, SO --

01:31PM 3 MR. COOPERSMITH: RIGHT.

01:31PM 4 THE COURT: AND YOUR NEXT WAS?

01:31PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

01:31PM 6 NUMBER 52, THIS WAS A JUROR WHO WAS VERY CANDID AND
01:31PM 7 PERHAPS BRAVE AND DIDN'T MIND DISCUSSING PRIOR CONVICTIONS IN
01:31PM 8 OPEN PUBLIC, OPEN RECORD.

01:31PM 9 HE SAID THAT, IN THE TRANSCRIPT, THAT HE HAD BEEN ON THE
01:31PM 10 DEFENDANT'S SIDE OF THE LAW, SO HE SAID HE GUESSED HIS OPINION
01:31PM 11 OF BEING A DEFENDANT IS GENERALLY IF YOU'RE ACCUSED OR BEING
01:32PM 12 ACCUSED OR INDICTED FOR SOMETHING, IT'S GENERALLY YOU'RE GUILTY
01:32PM 13 OF IT. WHETHER OR NOT IT CAN BE PROVEN IS A DIFFERENT STORY.

01:32PM 14 AND THEN HE WENT ON TO SAY, SO GENERALLY IF YOU'RE ACCUSED
01:32PM 15 OF SOMETHING, IT'S GENERALLY BECAUSE YOU, YOU DID SOMETHING
01:32PM 16 WRONG, AGAIN, WHETHER YOU CAN PROVE IT OR NOT.

01:32PM 17 HE THINKS THAT IF SOMEONE HAS BEEN ARRESTED, ACCUSED,
01:32PM 18 INDICTED, THERE'S SOME GUILT IN THAT.

01:32PM 19 HE SAID THAT -- THE QUESTION TO HIM WAS, AND DO YOU THINK
01:32PM 20 IT WOULD BE DEFENSE'S OBLIGATION TO TRY TO PROVE THE INNOCENCE
01:32PM 21 OF IN THIS CASE MR. BALWANI?

01:32PM 22 AND HIS ANSWER WAS: I THINK SO.

01:32PM 23 AND THEN HE SAID: I DON'T THINK I'M ASKING HIM TO PROVE
01:32PM 24 INNOCENCE. IT'S MORE IN MY VIEW THINKING THAT THERE IS SOME
01:32PM 25 TRUTH IN ALLEGATIONS AND INDICTMENTS.

01:32PM 1 AND I THINK WE ASKED A LOT OF QUESTIONS OF HIM TO TRY TO
01:32PM 2 SHAKE HIM OFF OF IT, FOR LACK OF A BETTER WORD, TO UNDERSTAND
01:32PM 3 THE PROCESS. HE OBVIOUSLY HAD EXPERIENCE SOME TIME AGO WITH
01:32PM 4 THE CRIMINAL JUSTICE SYSTEM.

01:32PM 5 I THINK GIVEN THOSE ANSWERS, WE THINK THIS WOULD BE A
01:32PM 6 REASON TO STRIKE HIM FOR CAUSE.

01:32PM 7 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OPPOSES
01:33PM 8 STRIKING 52 FOR CAUSE.

01:33PM 9 LET ME START WITH HIS QUESTIONNAIRE. ON QUESTIONS 39 AND
01:33PM 10 46, QUESTIONS THAT ASK ABOUT ABILITY TO BE FAIR AND IMPARTIAL,
01:33PM 11 HE ANSWERS NO.

01:33PM 12 FORGIVE ME. LET ME REPHRASE THAT. IS THERE ANYTHING THAT
01:33PM 13 WOULD INFLUENCE OR AFFECT YOUR ABILITY TO BE FAIR?

01:33PM 14 TO EACH ONE HE ANSWERS NO.

01:33PM 15 QUESTIONS ABOUT WHETHER, BECAUSE SOMEONE HAS BEEN CHARGED,
01:33PM 16 DOES THAT MEAN THAT THEY'RE MORE LIKELY TO BE GUILTY CAN BE
01:33PM 17 ANSWERED TWO DIFFERENT WAYS.

01:33PM 18 ONE WAY IS, DOES THE FACT OF THE CHARGE MAKE THEM GUILTY?
01:33PM 19 AND OBVIOUSLY THE ANSWER TO THAT IS NO BASED ON THE PRESUMPTION
01:33PM 20 OF INNOCENCE.

01:33PM 21 BUT THE OTHER WAY THAT QUESTION CAN BE ANSWERED IS, IN
01:33PM 22 YOUR EXPERIENCE, IS IT MORE LIKELY THAN NOT THAT THE PERSON WHO
01:33PM 23 HAS BEEN CHARGED IS ACTUALLY GUILTY?

01:33PM 24 WHICH BEGS THINGS LIKE CONVICTION RATES OR GUILTY PLEA
01:33PM 25 RATES.

01:33PM 1 AND IT'S CERTAINLY POSSIBLE THAT HIS EXPERIENCES, HIS LIFE
01:34PM 2 EXPERIENCES SUGGEST, AND HE WAS ANSWERING IT IN THE LATTER, NOT
01:34PM 3 THE FORMER. WHEN WE FOLLOWED UP WITH HIM -- AND BY "WE" I MEAN
01:34PM 4 THE COURT AND MR. COOPERSMITH -- HE SAID THAT HE CAN HOLD THE
01:34PM 5 GOVERNMENT TO ITS BURDEN. HE WOULD NOT REQUIRE THE DEFENDANT
01:34PM 6 TO PROVE INNOCENCE.

01:34PM 7 I'M NOT ASKING MR. BALWANI TO PROVE INNOCENCE. I CAN PUT
01:34PM 8 MY VIEWS IN A CLOSET. IT WOULD NOT BE DIFFICULT.

01:34PM 9 ANY DOUBT ABOUT THAT?

01:34PM 10 NO.

01:34PM 11 SO I THINK THE RECORD SUGGESTS THAT WHEN HE MAKES
01:34PM 12 STATEMENTS ABOUT THE FACT OF CHARGES, SPEAKING ABOUT THE
01:34PM 13 LIKELIHOOD OF GUILT, HE WAS SPEAKING ABOUT, DID THE PERSON
01:34PM 14 COMMIT THE CRIME IN THE WORLD? DID IT OCCUR?

01:34PM 15 AND NOT, IS HE GOING TO HOLD MR. BALWANI TO A BURDEN, TO
01:34PM 16 ANY BURDEN AT ALL IN THE TRIAL?

01:34PM 17 I THINK HIS ANSWERS ON THAT ARE CLEAR AND THERE'S NOT A
01:34PM 18 BASIS TO EXCUSE HIM FOR CAUSE.

01:34PM 19 THE COURT: THANK YOU. HE WAS -- AND THIS HAPPENED
01:35PM 20 WITH A COUPLE OF PROSPECTIVE JURORS ABOUT, WELL, THEY'RE HERE,
01:35PM 21 THIS MUST MEAN SOMETHING.

01:35PM 22 AND OF COURSE WE ALL THINK, WELL, OF COURSE, THERE'S
01:35PM 23 PROBABLE CAUSE, AND THAT'S WHAT GETS AN INDICTMENT, PERHAPS,
01:35PM 24 THAT'S WHERE IT GOES, THAT'S PART OF THE PATH, BUT THAT DOES
01:35PM 25 NOT MEAN THE SAME THING AS A CONVICTION BEYOND A REASONABLE

01:35PM 1 DOUBT.

01:35PM 2 WE DON'T GET INTO CRIMINAL LAW LECTURES WITH JURORS ABOUT
01:35PM 3 THOSE THINGS.

01:35PM 4 BUT WE CERTAINLY UNDERSTAND THE LAYPERSON'S OBSERVATION I
01:35PM 5 THINK OF THE JUSTICE SYSTEM AND HOW THOSE THINGS MIGHT CONFLATE
01:35PM 6 INTO ONE AS OPPOSED TO PARSED OUT.

01:35PM 7 HE HAS, AS WE KNOW FROM HIS CANDOR, EXPERIENCE IN THE
01:35PM 8 JUSTICE SYSTEM IN HIS YOUTH, AND HE TOLD US ABOUT THAT.

01:35PM 9 I HAD SOME CONCERNS ABOUT HIS COMMENTS AND HIS STATEMENTS
01:35PM 10 BOTH IN HIS QUESTIONNAIRE AND THEN SOME FOLLOWUP.

01:35PM 11 BUT AT THE END, I DO THINK AND I REMEMBER THE ANSWERS TO
01:36PM 12 THE QUESTIONS, AND I REMEMBER ASKING HIM, DO YOU HAVE ANY DOUBT
01:36PM 13 ABOUT THIS?

01:36PM 14 AND I ASKED THAT INTENTIONALLY BECAUSE IT WAS -- CANDIDLY,
01:36PM 15 THERE WAS A -- I'LL CALL IT A REHABILITATION OF HIS ANSWERS TO
01:36PM 16 TRY TO ASK HIM -- OR CLARIFICATION OF HIS ANSWERS TO WHAT THE
01:36PM 17 TRIAL WOULD BE ABOUT AND THE STANDARDS AND BURDEN OF PROOF, AND
01:36PM 18 THAT WAS HIS ANSWER, NO. OKAY.

01:36PM 19 I HAD MY FEELINGS, I CAN BE FAIR, I WILL BE FAIR, NO DOUBT
01:36PM 20 ABOUT THAT.

01:36PM 21 SO I'M NOT GOING TO STRIKE HIM FOR CAUSE. I CERTAINLY
01:36PM 22 UNDERSTAND THE CONCERNS THAT COLLOQUY WOULD BRING.

01:36PM 23 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:36PM 24 THE ONLY OTHER THING I WILL MENTION QUICKLY WITH HIM IS HE
01:36PM 25 DID SAY HE WATCHED PART, NOT THE ENTIRETY, BUT HE WALKED PART

01:36PM 1 OF THE ERIKA CHEUNG "TED TALK," WHICH WAS OF CONCERN TO US.

01:36PM 2 BUT THE OTHER THING I JUST WONDERED IS WITH THE PAST, IT

01:36PM 3 SOUNDED LIKE FELONY CONVICTIONS, HE MAY WELL HAVE HAD HIS CIVIL

01:36PM 4 RIGHTS RESTORED. NOBODY ASKED HIM THAT QUESTION, SO WE DON'T

01:37PM 5 KNOW THE ANSWER TO THAT.

01:37PM 6 THE COURT: OH.

01:37PM 7 MR. COOPERSMITH: HOW DOES THE COURT --

01:37PM 8 THE COURT: YOU CAN DO A RECORD CHECK OR SOMETHING.

01:37PM 9 I WAS -- HE SAID IN HIS YOUTH, AND I WAS CONCERNED, ARE

01:37PM 10 THESE JUVENILE CONVICTIONS THAT OTHERWISE WOULD NOT BE

01:37PM 11 ADMISSIBLE?

01:37PM 12 BUT WE DIDN'T ASK HIM THAT, AND I DIDN'T ASK HIM THAT.

01:37PM 13 HE SAID IN HIS YOUTH. I THINK HE TOLD US HIS AGE IN THE

01:37PM 14 QUESTIONNAIRE.

01:37PM 15 BUT THAT WAS MY THOUGHT. MAYBE I DID ASK HIM THAT

01:37PM 16 ACTUALLY. WELL, THIS WAS WHEN YOU WERE YOUNG?

01:37PM 17 MR. COOPERSMITH: DEFINITELY, YOUR HONOR, HE DID SAY

01:37PM 18 THAT. I JUST DON'T KNOW HOW YOUNG.

01:37PM 19 THE COURT: RIGHT. RIGHT.

01:37PM 20 MR. COOPERSMITH: BECAUSE OBVIOUSLY WHAT WE WOULDN'T

01:37PM 21 WANT IS FOR A JUROR TO BE SEATED AND THEN IT LATER TURNS OUT

01:37PM 22 THAT THE JUROR WAS INELIGIBLE.

01:37PM 23 THE COURT: RIGHT.

01:37PM 24 MR. COOPERSMITH: I DON'T KNOW ONE WAY OR THE OTHER

01:37PM 25 WHETHER HE IS OR ISN'T, BUT --

01:37PM 1 THE COURT: AND THE QUESTIONNAIRE DIDN'T ASK, HAVE
01:37PM 2 YOU BEEN CONVICTED OF A FELONY, DOES IT? WE DIDN'T ASK THAT.

01:37PM 3 MR. COOPERSMITH: IT DID NOT AS FAR AS I CAN
01:38PM 4 REMEMBER.

01:38PM 5 THE COURT: I'M TRYING TO RECALL. I DON'T HAVE THE
01:38PM 6 TRANSCRIPT IN FRONT OF ME, BUT I THINK HE TOLD US, DID HE,
01:38PM 7 THERE WERE THEFT OFFENSES, FRAUD OFFENSES, SOMETHING LIKE THAT?

01:38PM 8 MR. SCHENK: AN EMBEZZLEMENT.

01:38PM 9 MR. COOPERSMITH: THAT'S CORRECT.

01:38PM 10 THE COURT: RIGHT. RIGHT, QUERY WHETHER THAT WAS A
01:38PM 11 FELONY OR A MISDEMEANOR OR IT WAS, YOU KNOW, A WOBBLER THAT WAS
01:38PM 12 REDUCED TO A MISDEMEANOR AND THEN HE HAD HIS RECORD CLEARED
01:38PM 13 UNDER 1203.4 OF THE PENAL CODE I THINK IT IS.

01:38PM 14 MR. SCHENK: HE TOLD US THAT HIS AGE IS 48, AND THAT
01:38PM 15 HIS PRIORS WERE ABOUT 30 YEARS AGO.

01:38PM 16 THE COURT: WELL, THAT'S CUTTING IT CLOSE, ISN'T IT?
01:39PM 17 YOU KNOW, I THINK, LET ME JUST SAY THIS, OUT OF AN
01:39PM 18 ABUNDANCE OF CAUTION, I WOULD HATE TO SEE A JUROR SIT AND
01:39PM 19 DISCOVER THAT HE OR SHE WAS NOT QUALIFIED BECAUSE OF SOME OTHER
01:39PM 20 REASON.

01:39PM 21 SO LET ME STRIKE HIM OUT OF AN ABUNDANCE OF CAUTION.

01:39PM 22 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:39PM 23 THOSE ARE ALL OF THE --

01:39PM 24 MR. SCHENK: I'M SORRY, THE BASIS IS CAUSE?

01:39PM 25 THE COURT: CAUSE, I'M SORRY.

01:39PM 1 NOT OUT OF AN ABUNDANCE OF CAUTION.

01:39PM 2 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:39PM 3 THOSE WERE ALL OF THE ADDITIONAL CAUSE AND HARDSHIP ISSUES
01:39PM 4 I WANTED TO RAISE.

01:39PM 5 I THINK IT MIGHT BE WISE FOR US ALL TO MAKE SURE WE ARE ON
01:39PM 6 THE SAME PAGE IN TERMS OF THE COUNT AT THIS POINT.

01:39PM 7 THE COURT: RIGHT.

01:39PM 8 MR. COOPERSMITH: I BELIEVE WE MIGHT BE RIGHT AT 40.

01:39PM 9 MR. SCHENK: I THINK 41, AND I CAN READ THE NUMBERS
01:39PM 10 IF THAT WOULD BE HELPFUL.

01:39PM 11 THE COURT: WELL, WHY DON'T -- THAT WOULD BE
01:40PM 12 HELPFUL, BUT LET'S TAKE A BREAK. LET'S TAKE ABOUT TEN MINUTES
01:40PM 13 AND LET YOU LOOK AT YOUR CALCULATIONS AND SEE WHERE YOU ARE,
01:40PM 14 AND THEN WE'LL COUNT UP AND SEE WHAT THAT IS.

01:40PM 15 WOULD THAT BE ALL RIGHT?

01:40PM 16 MR. COOPERSMITH: YES, YOUR HONOR.

01:40PM 17 MR. SCHENK: YES.

01:40PM 18 THE COURT: AND THEN MAYBE WE CAN GO FORWARD IF WE
01:40PM 19 HAVE SUFFICIENT NUMBERS.

01:40PM 20 MR. COOPERSMITH: YEAH, AND I MAY HAVE SOME
01:40PM 21 ADDITIONAL THOUGHTS TO OFFER BEFORE THAT. BUT, YES, YOUR
01:40PM 22 HONOR, OF COURSE.

01:40PM 23 THE COURT: OKAY. LET'S TAKE ABOUT TEN MINUTES.

01:40PM 24 (RECESS FROM 1:40 P.M. UNTIL 1:56 P.M.)

01:56PM 25 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES

01:56PM 1 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

01:56PM 2 COUNSEL, WHAT IS THE STATUS OF THINGS?

01:56PM 3 MR. SCHENK: YOUR HONOR, WE'VE MET AND CONFERRED,

01:56PM 4 AND WE HAVE A LIST OF REMAINING JURORS THAT WE AGREE UPON.

01:56PM 5 THERE ARE 40 REMAINING JURORS.

01:56PM 6 THE COURT: OKAY. IF ONE OF YOU WOULD INDICATE THE

01:57PM 7 NUMBER OF JURORS, PROSPECTIVE JURORS THAT REMAIN.

01:57PM 8 MR. SCHENK: YOUR HONOR, THE REMAIN JURORS ARE: 14,

01:57PM 9 18, 26, 36, 44, 45, 48, 67, 79, 80, 82, 101, 102, 103, 108,

01:57PM 10 109, 113, 114, 115, 116, 117, 119, 125, 129, 131, 133, 134,

01:58PM 11 142, 143, 160, 161, 162, 163, 164, 165, 167, 169, 170, 179, AND

01:58PM 12 181.

01:58PM 13 THE COURT: THANK YOU.

01:58PM 14 MR. COOPERSMITH, DO YOU AGREE WITH THAT?

01:58PM 15 MR. COOPERSMITH: WE AGREE THAT THOSE ARE THE 40

01:58PM 16 JURORS THAT REMAIN AFTER ALL OF THE STRIKES, YOUR HONOR.

01:58PM 17 THE COURT: OKAY.

01:58PM 18 MR. COOPERSMITH: AND I DID WANT TO RAISE ONE THING

01:58PM 19 BEFORE WE START TO GO THROUGH THIS PROCESS.

01:58PM 20 SO AS YOUR HONOR REMEMBERS, ON WEDNESDAY I HAD MADE A

01:58PM 21 MOTION TO STRIKE THE FIRST PANEL BECAUSE I THOUGHT THEY WERE

01:58PM 22 TAINTED BASED ON COMMENTS MADE, AND I UNDERSTAND THE COURT

01:58PM 23 DENIED THAT MOTION.

01:58PM 24 AND, YOU KNOW, THIS WAS BECAUSE, YOU KNOW, JURORS HAD

01:58PM 25 BLURTED OUT THINGS LIKE THE TECHNOLOGY WAS IMPOSSIBLE TO DO ALL

01:59PM 1 TESTS WITH JUST ONE DROP, THAT IT'S A FRAUD, IT'S A FRAUDULENT
01:59PM 2 COMPANY, ONE JUROR SAID IT WAS A SENSE OF BETRAYAL WHEN THINGS
01:59PM 3 ARE MISUSED IN THE MEDICAL WORLD.

01:59PM 4 THESE WERE THE TYPES OF COMMENTS THAT WE WERE CONCERNED
01:59PM 5 ABOUT. I KNOW THE COURT DENIED THE MOTION.

01:59PM 6 WHAT WE THINK MIGHT BE ANOTHER REMEDY, ALTHOUGH WE STILL
01:59PM 7 STAND BY THAT MOTION, DESPITE THE COURT DENYING IT, WE
01:59PM 8 RESPECTFULLY DISAGREE WITH IT, WE THINK ANOTHER REMEDY WHICH
01:59PM 9 MIGHT MAKE THINGS A LITTLE FAIRER, BECAUSE I THINK THE PROCESS
01:59PM 10 ON THURSDAY, YESTERDAY, WENT A LITTLE MORE SMOOTHLY, IS TO FILL
01:59PM 11 THE BOX WITH THESE 40 JURORS STARTING FROM THE SECOND PANEL
01:59PM 12 RATHER THAN THE FIRST PANEL; AND THERE'S NO -- OBVIOUSLY THE
01:59PM 13 JURORS WHO HAD LOWER NUMBERS WHO WERE IN THE FIRST PANEL, THAT
01:59PM 14 WAS RANDOMLY ASSIGNED BY THE CLERK.

01:59PM 15 I DO ACKNOWLEDGE THAT NOW THAT WE KNOW SOMETHING ABOUT AT
01:59PM 16 LEAST A LOT OF THESE JURORS, WE ARE, IF WE WENT THIS WAY, ARE
01:59PM 17 MAKING A DECISION THAT THAT WOULD BE -- YOU KNOW, MAYBE WE'RE
02:00PM 18 PUTTING A LITTLE MORE WEIGHT ON WHAT WE KNOW ABOUT THE SECOND
02:00PM 19 PANEL.

02:00PM 20 NOTWITHSTANDING THAT, THOUGH, I THINK IT WOULD BE ANOTHER
02:00PM 21 WAY TO GET THE PROCESS MOVING, TO PICK THE JURY, BUT AT LEAST
02:00PM 22 PROVIDE SOME REMEDY FOR WHAT WE AT LEAST SAW ON THE FIRST DAY
02:00PM 23 AND SOME PROBLEMS WITH TAIN OF THE PANEL.

02:00PM 24 THE COURT: OKAY.

02:00PM 25 MR. SCHENK.

02:00PM 1 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OPPOSES
02:00PM 2 THAT.

02:00PM 3 THERE IS A RANDOMNESS, THE USE OF COMPUTERS TO SELECT THE
02:00PM 4 VENIRE, TO SEND OUT THE SUMMONS, TO INVITE JURORS IN, AND IT'S
02:00PM 5 THROUGH THAT PROCESS THAT NUMBERS ARE APPLIED TO EACH JUROR.

02:00PM 6 AND TO NOW SORT OF USE HUMAN INTERVENTION TO PUT A THUMB
02:00PM 7 ON THE SCALE AND REORDER THE PANELS AFFECTS THE RANDOMNESS THAT
02:00PM 8 IS IMPORTANT IN THE PROCESS OF SELECTING JURORS. THE
02:00PM 9 RANDOMNESS AVOIDS BIAS OR OTHER THINGS FROM ENTERING INTO THE
02:00PM 10 ORDERING OF THE JURORS.

02:00PM 11 THE COURT GOT THE RULING CORRECT WHEN IT DENIED THE
02:01PM 12 DEFENSE'S MOTION TO STRIKE THE ENTIRE DAY ONE PANEL, AND
02:01PM 13 BECAUSE THE COURT GOT THAT RULING CORRECT, THERE IS NO NEED TO
02:01PM 14 MAKE ANY CHANGES OR INTERVENTIONS.

02:01PM 15 AND EVEN THE PROPOSAL BY THE DEFENSE BY PUTTING PANEL 2 IN
02:01PM 16 FRONT OF PANEL 1 STILL CREATES THE OPPORTUNITY THROUGH THE USE
02:01PM 17 OF STRIKES TO GO INTO PANEL NUMBER 1.

02:01PM 18 SO IF THERE IS SOME INFECTION THAT OCCURRED THROUGH THE
02:01PM 19 BLURTING OUT OF STATEMENTS, THIS DOESN'T SOLVE THAT.

02:01PM 20 SO IT'S AN INEFFECTIVE, INAPPROPRIATE SOLUTION TO A
02:01PM 21 NONEXISTENT PROBLEM, AND THAT'S WHY THE GOVERNMENT BELIEVES
02:01PM 22 THAT THE COURT SHOULD NOT REORDER THE PANELS.

02:01PM 23 MR. COOPERSMITH: YOUR HONOR, I AGREE IT DOESN'T
02:01PM 24 SOLVE IT. IT MITIGATES IT, AND THAT WAS THE REASON FOR THE
02:01PM 25 SUGGESTION.

02:01PM 1 THE COURT: SURE. OKAY. THANK YOU.

02:01PM 2 WELL, ABSENT A STIPULATION FROM THE PARTIES TO DO THAT,

02:01PM 3 I'M NOT GOING TO DO THAT, MR. COOPERSMITH. I THINK THAT REALLY

02:01PM 4 WOULD, IN ESSENCE, INTERJECT THE COURT INTO THE SELECTION

02:02PM 5 PROCESS OF THE LAWYERS BY ASKING THE COURT TO MAKE A

02:02PM 6 DETERMINATION OUTSIDE OF RANDOMNESS FOR WHATEVER REASON,

02:02PM 7 PREFERENTIAL REASON, AND I JUST, I THINK THAT'S CONTRARY TO THE

02:02PM 8 THEORY AND SPIRIT OF RANDOM SELECTION OF JURORS RESPECTING THE

02:02PM 9 PEREMPTORY CHALLENGES.

02:02PM 10 WE'VE HAD THE CAUSE PORTION, AND THE COURT HAS HEARD CAUSE

02:02PM 11 AND HARDSHIP FROM BOTH SIDES AND HAS MADE ITS DECISION ON

02:02PM 12 THOSE. THAT'S PART OF THE PROCESS.

02:02PM 13 I THINK TO CHANGE THAT NOW WOULD BE INAPPROPRIATE. I DO

02:02PM 14 BELIEVE IT WOULD BE INAPPROPRIATE TO ADJUST THAT ABSENT A

02:02PM 15 STIPULATION OF THE PARTIES WITH ANYTHING MORE, AND I DON'T HEAR

02:02PM 16 ONE. SO I'M GOING TO DECLINE YOUR INVITATION TO DO THAT.

02:03PM 17 WE'LL BEGIN THE SELECTION PROCESS. YOU WILL HAVE THE FORM

02:03PM 18 HANDED TO YOU BY OUR COURTROOM DEPUTY, AND THEN YOU CAN PASS

02:03PM 19 THE SHEET BACK AND FORTH.

02:03PM 20 ANY QUESTIONS ABOUT THAT PROCESS?

02:03PM 21 MR. SCHENK: YOUR HONOR, ONE CLARIFICATION.

02:03PM 22 MY RECOLLECTION IS THAT THE COURT REQUIRES ALL STRIKES TO

02:03PM 23 OCCUR WITHIN THE BOX, SO THAT THE FIRST 12 JURORS, YOU HAVE TO

02:03PM 24 ESSENTIALLY DRAW AN IMAGINARY LINE IN YOUR MIND --

02:03PM 25 THE COURT: THAT'S RIGHT.

02:03PM 1 MR. SCHENK: -- AND NOT STRIKE JUROR 15, FOR
02:03PM 2 INSTANCE, WITH YOUR VERY FIRST STRIKE.

02:03PM 3 THE COURT: THAT'S RIGHT. THE WAY IT WORKS IS THAT
02:03PM 4 THERE'S ALWAYS -- SO THIS FIRST -- WHAT YOU'RE DOING NOW IS
02:03PM 5 SELECTING THE 12 MEMBERS OF THE JURY WHO WILL HEAR THE CASE.

02:03PM 6 WE'LL THEN MOVE INTO ALTERNATES. SO THERE'S ALWAYS A
02:03PM 7 BENCH, IF YOU WILL, OF 12, AND YOUR STRIKES MUST BE 1 THROUGH
02:03PM 8 12 INITIALLY. YOU CAN'T SAY, I'LL STRIKE 15 INITIALLY.

02:04PM 9 IF THERE ARE STRIKES IN THAT 12, THEN 13 MOVES IN
02:04PM 10 VIRTUALLY, AND I'LL ASK YOU TO DO THAT IN A CENTIPEDE FASHION,
02:04PM 11 I'LL CALL IT THAT, TO VIRTUALLY MOVE IN THE NEXT PERSON TO FILL
02:04PM 12 THAT SPOT.

02:04PM 13 DOES THAT MAKE SENSE?

02:04PM 14 MR. COOPERSMITH: YES, YOUR HONOR.

02:04PM 15 SO TO MAKE SURE I UNDERSTAND, ONCE A JUROR FILLS A SPOT IN
02:04PM 16 THE 12 IN THE VIRTUAL BOX, THAT JUROR IS ELIGIBLE TO BE STRUCK
02:04PM 17 WITH A PEREMPTORY?

02:04PM 18 THE COURT: CORRECT.

02:04PM 19 MR. COOPERSMITH: AND THEN THE SAME PROCESS I ASSUME
02:04PM 20 WOULD WORK WITH THE SIX ALTERNATES WHERE WE WOULD BASICALLY
02:04PM 21 VIRTUALLY HAVE A BOX OF SIX; IS THAT RIGHT.

02:04PM 22 THE COURT: YES. DOES THAT HELP YOU?

02:04PM 23 MR. SCHENK: YES.

02:04PM 24 THE COURT: ARE YOU READY TO BEGIN THAT PROCESS?

02:04PM 25 MR. SCHENK: YES, YOUR HONOR.

02:04PM 1 MR. COOPERSMITH: YES, YOUR HONOR.

02:04PM 2 THE COURT: OKAY. I'LL ASK OUR COURTROOM DEPUTY IN
02:04PM 3 JUST A MOMENT TO HAND YOU THE SHEET THAT WE HAVE PREPARED.

02:04PM 4 (DISCUSSION OFF THE RECORD.)

02:09PM 5 THE COURT: COUNSEL, I ALSO WANT TO LET YOU KNOW
02:09PM 6 THAT ONCE WE SECURE THE JURY AND ALTERNATES TODAY, MY INTENT IS
02:09PM 7 TO HAVE THEM COME BACK AND WE'LL SEE IF WE CAN GET THEM HERE
02:09PM 8 MONDAY FOR SWEARING IN IF THAT'S POSSIBLE.

02:09PM 9 IF NOT, WE'LL DO THAT TUESDAY FIRST THING.

02:09PM 10 BUT IT'S MY INTENT NOT TO RELEASE OUR THIRD PANEL JUST OUT
02:09PM 11 OF AN ABUNDANCE OF CAUTION. SO I'M NOT GOING TO RELEASE THE
02:09PM 12 THIRD PANEL UNTIL WE'VE SWORN IN OUR PANEL AND OUR ALTERNATES.

02:09PM 13 MR. COOPERSMITH: YES, YOUR HONOR.

02:09PM 14 MR. SCHENK: THANK YOU.

02:09PM 15 THE COURT: AND THEN WE'LL SEE IF WE CAN BRING THEM
02:09PM 16 IN MONDAY DEPENDING ON THE TIMING.

02:09PM 17 MR. COOPERSMITH: THANK YOU.

02:10PM 18 MR. SCHENK: SWEARING IN WOULD BE THE ONLY THING ON
02:10PM 19 MONDAY?

02:10PM 20 THE COURT: CORRECT. YES, THAT'S CORRECT.

02:10PM 21 (PAUSE IN PROCEEDINGS.)

02:10PM 22 MR. SCHENK: JUST FOR CLARIFICATION, YOUR HONOR,
02:10PM 23 WE'VE BEEN USING NUMBERS, JUROR NUMBERS.

02:10PM 24 THE TOP HALF OF THE SHEET HAS A LINE ON IT WHERE WE WRITE
02:10PM 25 OUR STRIKES. I WANT TO CONFIRM THAT WE JUST WRITE NUMBERS ON

02:11PM 1 THE LINE.

02:11PM 2 I CAN PASS IT UP.

02:11PM 3 THE CLERK: INSTEAD OF THEIR NAME.

02:11PM 4 THE COURT: I THINK THAT'S SUFFICIENT. AS LONG AS

02:11PM 5 EVERYBODY KNOWS, RIGHT. YOU DON'T HAVE TO WRITE OUT THEIR

02:11PM 6 NAMES, RIGHT.

02:11PM 7 IF YOU PUT THE NUMBERS DOWN, THAT'S SUFFICIENT.

02:11PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

02:11PM 9 THE COURT: DO YOU UNDERSTAND THAT, MR. COOPERSMITH?

02:11PM 10 MR. COOPERSMITH: YES.

02:11PM 11 THE COURT: THANK YOU.

02:11PM 12 MR. SCHENK: I'M SORRY. YOUR HONOR ALSO TOLD US THE

02:11PM 13 OTHER DAY, IF WE PASS, WE DO NOT LOSE THE STRIKE UNLESS THE

02:11PM 14 OTHER SIDE PASSES, AND THEN THAT MEANS WE HAVE A JURY OR WE

02:11PM 15 HAVE A GROUP OF ALTERNATES.

02:11PM 16 THE COURT: THAT'S CORRECT. A PASS IS NOT A STRIKE.

02:11PM 17 THAT DOESN'T SUBTRACT FROM YOUR STRIKES.

02:11PM 18 TWO PASSES IN SUCCESSION MEANS WE HAVE A JURY.

02:11PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

02:11PM 20 MR. SCHENK: THANK YOU, YOUR HONOR.

02:11PM 21 (PAUSE IN PROCEEDINGS.)

02:27PM 22 THE COURT: COUNSEL, I JUST WANT TO INTERRUPT YOUR

02:27PM 23 PROCESS FOR JUST A MOMENT.

02:27PM 24 I JUST WANT TO BE CERTAIN THAT I WAS CLEAR. RIGHT NOW

02:27PM 25 WE'RE DOING THE 12, THE 12 MEMBERS OF THE JURY.

02:27PM 1 IF AND WHEN YOU REACH THAT 12, THEN PLEASE LET ME KNOW AND
02:27PM 2 WE'LL STOP, AND WE'LL MEMORIALIZE THAT, AND THEN WE'LL GO
02:27PM 3 FORWARD.

02:27PM 4 MR. COOPERSMITH: YES, YOUR HONOR.

02:27PM 5 THE COURT: WAS THAT YOUR UNDERSTANDING?

02:28PM 6 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:28PM 7 MR. SCHENK: YES.

02:28PM 8 THE COURT: GREAT. THANK YOU. SORRY TO INTERRUPT.

02:28PM 9 (PAUSE IN PROCEEDINGS.)

02:54PM 10 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES
02:55PM 11 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

02:55PM 12 MR. SCHENK?

02:55PM 13 MR. SCHENK: YOUR HONOR, WE HAVE A JURY. THE
02:55PM 14 GOVERNMENT HAS PASSED IT'S FINAL TWO, AND I WONDER IF I SHOULD
02:55PM 15 WRITE "PASS" IN. WE HAVE LEFT IT BLANK IN THE EVENT THE
02:55PM 16 GOVERNMENT USED THOSE FINAL TWO, BUT WE HAVE A JURY NOW, SO --

02:55PM 17 THE COURT: SURE, WHY DON'T YOU WRITE THAT IN.

02:55PM 18 IS THAT ALL RIGHT WITH YOU, MR. COOPERSMITH?

02:55PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

02:55PM 20 THE COURT: OKAY.

02:55PM 21 MR. SCHENK: SHOULD I PASS THAT UP?

02:55PM 22 THE COURT: YES, IF YOU COULD HAND IT UP TO OUR
02:55PM 23 COURTROOM DEPUTY.

02:55PM 24 IF YOU COULD JUST CHECK THAT AGAINST YOUR LIST.

02:56PM 25 (PAUSE IN PROCEEDINGS.)

02:59PM 1 THE COURT: ALL RIGHT. THANK YOU.

02:59PM 2 OUR COURTROOM DEPUTY HAS RECEIVED THE WORK PRODUCT OF
02:59PM 3 COUNSEL ON THEIR STRIKES, AND I'M GOING TO ASK OUR COURTROOM
02:59PM 4 DEPUTY TO READ, BY JUROR NUMBER, THE MAKEUP OF THE 12 JURORS.
03:00PM 5 SO IT WILL BE -- THE FIRST NAME ON THE LIST WOULD BE JUROR
03:00PM 6 NUMBER 1 WILL SIT IN THAT SEAT, AND SO FORTH.

03:00PM 7 SO PLEASE LISTEN TO THESE NUMBERS TO SEE IF IT
03:00PM 8 CORRESPONDS, COUNSEL, WITH YOUR CALCULATION.

03:00PM 9 SO, MADAM CLERK, IF YOU COULD PLEASE READ THE NUMBERS OF
03:00PM 10 THE JURY.

03:00PM 11 THE CLERK: JUROR NUMBER 26 WILL BE JUROR NUMBER 1;
03:00PM 12 JUROR NUMBER 67 WILL BE JUROR NUMBER 2;
03:00PM 13 JUROR NUMBER 101 WILL BE JUROR NUMBER 3;
03:00PM 14 JUROR NUMBER 102 WILL BE JUROR NUMBER 4;
03:01PM 15 JUROR NUMBER 108 WILL BE JUROR NUMBER 5;
03:01PM 16 JUROR NUMBER 109 WILL BE JUROR NUMBER 6;
03:01PM 17 JUROR NUMBER 114 WILL BE JUROR NUMBER 7;
03:01PM 18 JUROR NUMBER 116 WILL BE JUROR NUMBER 8;
03:01PM 19 JUROR NUMBER 125 WILL BE JUROR NUMBER 9;
03:01PM 20 JUROR NUMBER 129 WILL BE JUROR NUMBER 10;
03:01PM 21 JUROR NUMBER 131 WILL BE JUROR NUMBER 11;
03:01PM 22 AND JUROR NUMBER 133 WILL BE JUROR NUMBER 12.

03:01PM 23 THE COURT: DOES THAT COMPORT WITH YOUR
03:01PM 24 CALCULATIONS, MR. SCHENK?

03:01PM 25 MR. SCHENK: YES, IT DOES.

03:02PM 1 THE COURT: MR. COOPERSMITH?

03:02PM 2 MR. COOPERSMITH: YES.

03:02PM 3 THE COURT: THANK YOU.

03:02PM 4 THOSE NUMBERS WILL COMPROMISE THE 12 JURORS WHO WILL SIT
03:02PM 5 IN THE BOX, THE 12 JURORS.

03:02PM 6 SHALL WE NOW MOVE TO THE SELECTION OF THE ALTERNATES? AND
03:02PM 7 THERE ARE SIX ALTERNATES, AND SO THE FOLLOWING, WHOEVER IS LEFT
03:02PM 8 IN SUCCESSION WILL BE THE UNIVERSE OF THOSE SELECTIONS, AND YOU
03:02PM 9 HAVE THREE STRIKES EACH.

03:02PM 10 THE SAME RULES APPLY. A PASS IS NOT A STRIKE; TWO PASSES
03:02PM 11 AND WE HAVE OUR ALTERNATE JURORS.

03:02PM 12 MR. SCHENK: YES, YOUR HONOR.

03:02PM 13 MR. COOPERSMITH: YES, YOUR HONOR.

03:02PM 14 THE COURT: DO YOU HAVE A SHEET TO BEGIN THAT?

03:02PM 15 MR. SCHENK: SHOULD WE GET THE SHEET BACK? I THINK
03:02PM 16 WE USE THE SAME.

03:02PM 17 THE COURT: YEAH, I THINK YOU CAN. IT MAKES MORE
03:02PM 18 SENSE TO DO THAT.

03:14PM 19 (PAUSE IN PROCEEDINGS.)

03:18PM 20 THE COURT: ALL RIGHT. LET'S GO BACK ON THE RECORD.

03:18PM 21 MR. SCHENK, MR. COOPERSMITH, HAVE YOU COMPLETED YOUR
03:19PM 22 SELECTION FOR THE ALTERNATE JURORS?

03:19PM 23 MR. SCHENK: YES, YOUR HONOR.

03:19PM 24 MR. COOPERSMITH: YES, YOUR HONOR.

03:19PM 25 THE COURT: ALL RIGHT. THANK YOU.

03:19PM 1 OUR COURTROOM DEPUTY WILL COMPILE THAT LIST AND THEN READ
03:19PM 2 THAT OUT TO YOU FOR US.

03:19PM 3 (PAUSE IN PROCEEDINGS.)

03:19PM 4 THE CLERK: JUROR NUMBER 134 WILL BE ALTERNATE JUROR
03:19PM 5 NUMBER 1;

03:19PM 6 JUROR NUMBER 142 WILL BE ALTERNATE JUROR NUMBER 2;

03:19PM 7 JUROR NUMBER 164 WILL BE ALTERNATE JUROR NUMBER 3;

03:19PM 8 JUROR NUMBER 167 WILL BE ALTERNATE JUROR NUMBER 4;

03:19PM 9 JUROR NUMBER 169 WILL BE ALTERNATE JUROR NUMBER 5;

03:20PM 10 JUROR NUMBER 170 WILL BE ALTERNATE JUROR NUMBER 6.

03:20PM 11 THE COURT: MR. SCHENK, DOES THAT COMPORT WITH YOUR
03:20PM 12 COMPILATION?

03:20PM 13 MR. SCHENK: YES, YOUR HONOR.

03:20PM 14 THE COURT: MR. COOPERSMITH?

03:20PM 15 MR. COOPERSMITH: YES, YOUR HONOR.

03:20PM 16 THE COURT: ALL RIGHT. THANK YOU.

03:20PM 17 THEN THOSE JURORS WILL BE SELECTED AS OUR CHOSEN ALTERNATE
03:20PM 18 JURORS. I'LL ASK OUR COURT COMMISSIONER TO ASK THE 12 AND THE
03:20PM 19 6 TO APPEAR THE NEXT COMING MONDAY. IS THAT THE 14TH I THINK
03:20PM 20 IT IS?

03:20PM 21 THE CLERK: IT IS.

03:20PM 22 THE COURT: SHOULD WE HAVE THEM COME IN AT
03:20PM 23 10:00 A.M., COUNSEL?

03:20PM 24 MR. COOPERSMITH: THAT WOULD BE FINE.

03:20PM 25 MR. SCHENK: YES, YOUR HONOR.

03:20PM 1 THE COURT: ALL RIGHT. WHAT I INTEND TO DO IS TO
03:20PM 2 SWEAR THEM AS A JUROR AND THE ALTERNATE JURORS.

03:20PM 3 I'M JUST CURIOUS, IF WE HAVE TIME, PERHAPS I'LL
03:20PM 4 PRE-INSTRUCT ON MONDAY AS WELL, AND THEN ON WEDNESDAY WE CAN
03:21PM 5 JUST BEGIN WITH YOUR OPENING STATEMENTS.

03:21PM 6 WOULD THAT WORK?

03:21PM 7 MR. SCHENK: I THINK IT WAS TUESDAY, YOUR HONOR.

03:21PM 8 THE COURT: TUESDAY. I'M SORRY.

03:21PM 9 MR. SCHENK: YES, THAT WOULD BE FINE.

03:21PM 10 THE COURT: THE PRELIMINARY INSTRUCTIONS ARE
03:21PM 11 20 MINUTES.

03:21PM 12 MR. COOPERSMITH: YOUR HONOR, I DON'T HAVE ANY
03:21PM 13 PROBLEM WITH THAT.

03:21PM 14 THE COURT: OKAY. LET'S SEE WHAT OUR TIME IS.

03:21PM 15 THAT WOULD ALLOW ME -- IN THE PRELIMINARY INSTRUCTIONS, AS
03:21PM 16 YOU KNOW, IT DOES HAVE THE ADMONITION, AND I'M THINKING IT
03:21PM 17 MIGHT BE WISE TO GIVE THEM AN ADMONITION BEFORE THEY LEAVE.

03:21PM 18 SO I'LL PLAN ON DOING THAT. I HOPE WE CAN ACCOMPLISH THAT
03:21PM 19 TIMEWISE.

03:21PM 20 MR. COOPERSMITH: BUT OPENING STATEMENTS WILL HAVE
03:21PM 21 TO BE TUESDAY?

03:21PM 22 THE COURT: YES, YOU WON'T HAVE TO OPEN ON MONDAY.
03:21PM 23 RIGHT. OKAY.

03:21PM 24 MR. COOPERSMITH: THANK YOU.

03:21PM 25 THE COURT: ANYTHING ELSE BEFORE WE BREAK?

03:21PM 1 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

03:21PM 2 MR. COOPERSMITH: NO, YOUR HONOR.

03:21PM 3 THE COURT: ALL RIGHT. THANK YOU. HAVE GOOD
03:21PM 4 WEEKENDS. GET PLENTY OF SLEEP.

03:21PM 5 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:21PM 6 THE COURT: AND WE'LL NOTIFY OUR COMMISSIONER TO
03:21PM 7 NOTIFY THESE JURORS.

03:21PM 8 I'M NOT GOING TO RELEASE THE THIRD PANEL YET. LET'S NOT,
03:22PM 9 AND PLEASE BE SPECIFIC, THAT WE'RE NOT GOING TO RELEASE THAT
03:22PM 10 PANEL.

03:22PM 11 THE CLERK: OKAY.

03:22PM 12 THE COURT: AND WE'LL SEE WHAT HAPPENS.

03:22PM 13 MR. SCHENK: ALSO, ARE WE JUST GOING TO SAY NOTHING
03:22PM 14 TO JUROR 179 AND 181 BECAUSE THE PARTIES DID NOT USE ALL OF
03:22PM 15 THEIR STRIKES, WE DID NOT NEED ALL 40 JURORS?

03:22PM 16 SO I THINK IF WE'RE NOT GOING TO RELEASE THE THIRD PANEL,
03:22PM 17 WE MIGHT AS WELL NOT SAY SOMETHING TO 179 AND 181 AT THIS
03:22PM 18 POINT.

03:22PM 19 THE COURT: THAT'S RIGHT, THEY'RE STILL PART OF THE
03:22PM 20 MIX POTENTIALLY, SHOULD THERE BE A NEED THEY WOULD FOLLOW NEXT.

03:22PM 21 MR. SCHENK: THANK YOU.

03:22PM 22 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:22PM 23 THE CLERK: COURT IS ADJOURNED.

03:22PM 24 (COURT ADJOURNED AT 3:22 P.M.)

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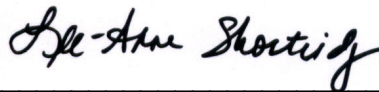
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MARCH 11, 2022